25.73

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1878.

WITH INDEX.

VOL. XVII.

Published by the Authority of the Governor General.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.
1879.

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING,
8, HASTINGS STREET.

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TO THE

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LAWS AND REGULATIONS.

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Government Central Press.—No. 380 L. D.—1-5-79.—240.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 2nd January 1878.

The Council adjourned to Wednesday, the 9th January 1878.

CALCUTTA;
The 2nd January 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 9th January 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I.
His Excellency the Commander-in-Chief, K.C.B.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndrá Mohan Tagore.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble the Rájá of Sirmur, K.C.S.I.
The Hon'ble Mumtáz-ud-Daola Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.
The Hon'ble G. C. Paul.
The Hon'ble E. C. Morgan.

NEW MEMBER.

The Hon'ble THE RÁJÁ OF SIRMUR took his seat as an Additional Member.

OPIUM ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to amend the Opium Act, 1876, be taken into consideration. He had given a very full explanation of the objects of this Bill on the occasion when leave was given to him to introduce it. The Select Committee had thought it best to go a step further than was intended at the time of the introduction of the Bill and to embody the entire Act of 1876, and in doing so they had found it necessary to make a variety of amendments merely of the nature of redrafting. He did not think that the transformation which the Act had undergone in that process had seriously affected its scope or intention. The Committee had rather improved the provision for facilitating grants of farms of opium-revenue and for the recovery of dues from farmers and their licensees. They had also provided that, if in any case a dispute arose between a farmer and his licensee, the execution of any process issued by the Collector or other officer for the recovery of arrears should be stayed if the licensee instituted a suit in the Civil Court to try the demand of the farmer. He did not think he need trouble the Council with any further remarks.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

HUSAINÁBÁD ENDOWMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to make better provision for the management of the Husainábád endowment at Lucknow. He said that, in order to put the Council in possession of the circumstances which led to legislation in the present case, he would have to begin with events which occurred no less than forty years ago, when Oudh was still under its Native Rulers, and the British Government was represented at Lucknow by a Resident.

In the year 1838, the third King of Oudh, Muhammad Alí Shah, built at Lucknow a mosque called Husainábád Mubárak, for the purpose of the celebration therein of certain religious ceremonies, and for the ultimate interment of himself and his mother.

In November 1839, Muhammad Alí Shah deposited the sum of twelve lákhs of Lucknow sicca rupees in the treasury of the late East India Company at the Residency at Lucknow; and, by a contemporaneous deed of gift, he declared that the annual interest on this sum at the rate of four per cent. per annum, together with the rent of certain shops and the income of certain religious offerings, should be applied to the payment of the pensions

of certain persons therein mentioned and their descendants, and to defraying the expenses of the mosque and the repairs of a road therein mentioned; and by the same deed the King appointed two of his servants, and after them their descendants, generation after generation, to be Superintendents (*mut'waḷís*) of the mosque, and another Muhammadan gentleman, and his descendants after him, to be Agent of the pensioners, and the expenses of the mosque were to be paid in perpetuity from the treasury of the East India Company to the two Superintendents and their descendants after them, and the pensions were to be paid through the Agent. The deed further provided that, in the event of failure of heirs of the Superintendents or Agent, the British Resident for the time being at Lucknow should, with the concurrence of three-fourths of the pensioners, appoint one of their number to the vacant post. The deed also contained the following provisions:—

"As the pensioners enumerated in this deed are objects of our peculiar consideration and favour, it is necessary that the Resident for the time being, owing to the union and friendship subsisting between the two Governments, treat them with kindness, and, considering them deserving of the support of the British Government, always afford them his aid and assistance.

"The undermentioned items of income are hereby remitted and shall be devoted to the expenses of the Husainábád Mubárak and its dependencies, and all the property in it is given by us as a gift. It shall not be optional with the sovereigns of Oudh, at any time, on any account whatsoever, to interfere in any way with it, and let the Resident for the time being, at the request of the *mut'waḷís* or Superintendents, in this particular matter, give his countenance and support that this good work may continue in existence for ever."

The items of income so referred to were the rents of certain shops attached to the mosque and the income from religious offerings thereto.

On the 5th December 1839, Colonel Caulfield, the British Resident at Lucknow, addressed a letter to Muhammad Alí Shah in which he acknowledged the receipt of the deed of gift, and stated that His Majesty might rest satisfied that every attention would be paid by the Resident to the wishes therein expressed, that his relatives would ever meet with the utmost attention, and that their interests would always be attended to by the Resident so far as his official duty permitted.

Some time after the date of the deed of gift, Muhammad Alí Shah added to the endowment so created Government promissory notes amounting to the sum of sicca rupees 2,417,500, but he did not expressly declare any trusts of such further endowment. These notes were believed to have been in September 1841 converted into Government promissory notes for Company's rupees, and to have been then endorsed in favour of the Superintendents and the Agent;

and at some time between that date and the month of February 1856, certain surplus-funds of the endowment were invested in Government promissory notes, some in the names of the Superintendents and Agent, and some in the names of the Superintendents only.

After the Mutiny of 1857 and the re-occupation of Lucknow, the mosque was found to have been stript off all its valuable property, and the promissory notes of which the endowment then consisted were missing; and it appeared on enquiry that the Agent had joined the mutineers and been killed during an attack on the city, and that the Superintendents had sold certain of the promissory notes.

The Government of India thereupon removed the existing Superintendents from their office, and called upon the existing pensioners to appoint under the deed of trust two other Superintendents and an Agent.

The Nawábs Moshin-úd-Daola and Mumtáz-úd-Daola were accordingly appointed Superintendents, and Sakamatulla Khán was appointed Agent, and such appointments were confirmed by the then Chief Commissioner of Oudh in the year 1860.

In the meanwhile most of the missing promissory notes were recovered, and of some of the others duplicates were granted by Government.

The Superintendents and Agent appointed as last aforesaid, subsequently obtained from the Civil Court at Lucknow a declaration of their title to the arrears of interest which had accrued due on the promissory notes then constituting the said endowment; and in the month of June 1864, the promissory notes and arrears were assigned to the Superintendents and Agent free from all restrictions.

Nawáb Moshin-úd-Daola had recently died, but the deed of trust conferred no power to appoint any other person to be a Superintendent in his stead.

It was doubtful whether the aforesaid appointment of Superintendents and Agent was a regular and valid appointment, and whether there existed any person who could exercise the power of appointment conferred on the Resident by the deed of gift.

If the Council had followed him (MR. STOKES) in this necessarily tedious story, it would, he was sure, agree with him that, owing to the changes which had happened since the death of Muhammad Alí Shah, it was expedient to provide for the management of the endowment; and that it was also desirable

to settle a scheme for the payment of the pensions referred to in the trust-deed, and for the application of the surplus-income of the endowment in defraying the expenses of the trust and in support of the mosque, road and other objects contemplated by Muhammad Alí Shah.

Should the Council allow him to introduce this Bill, he would at their next meeting describe the provisions which it contained. He would only say at present that the Bill had been approved, not only by the Local Government, but also by the persons concerned.

The Motion was put and agreed to.

SEA CUSTOMS BILL.

The Hon'ble MR. HOPE moved that the Hon'ble Sir A. J. Arbuthnot be added to the Select Committee on the Bill to consolidate and amend the law relating to the levy of Sea Customs-duties.

The Motion was put and agreed to.

SUNDRY BILLS.

His Excellency THE PRESIDENT said,—"Before adjourning the Council, I wish to take this opportunity of informing Hon'ble Members, that I have requested my Hon'ble friend Sir John Strachey, on the occasion of our next meeting, to explain to the Council the course we propose to follow with reference to the taxation Bills which he obtained leave to introduce on the 27th of last month, and I understand from him that he will be then in a position to do so. I may mention, also, that as my Hon'ble colleague Sir Andrew Clarke is obliged to leave Calcutta for a short period on public business, he will also take advantage of the same occasion to make a statement on the policy of the Government in the administration of the Department over which he himself presides."

His Honour THE LIEUTENANT-GOVERNOR said that, with reference to what His Excellency the President had just said, he might perhaps be permitted to express a hope that no unnecessary delay would occur in passing these Bills into law. Local legislation depended very much on the shape which these Bills would take, and naturally until their shape was finally settled, there was great doubt and unsettlement in men's minds as to the exact extent to which their interests would be affected by fresh taxation, and he thought this doubt and unsettlement were mischievous to the public mind, and embarrassing to the Government, and it would be well, therefore, for the public to know exactly the form which taxation would take. His Hon'ble friend's measures had been well received, and the necessity for further taxation had been loyally recognised, and therefore HIS HONOUR believed there was no real reason why these

measures should not be pushed through the Council as speedily as might be. It would assist the Local Government very much if these Bills were passed, not only by getting rid of the doubt to which he had referred, but as the cold season was drawing to an end, it was desirable that district-officers should take measures for the assessment of the license-tax and the performance of the work under their immediate eye. If the passing of these measures was deferred, we should have the hot weather setting in; district-officers would no longer be in camp, and the work would fall a good deal into the hands of Native subordinates. He also hoped his Hon'ble friend would take the opportunity of explaining definitely the scheme the Government of India had under consideration in respect to the expenditure of funds raised for famine-relief. As he understood his Hon'ble friend, the money which was to be raised by the Local Governments and paid to the Government of India would, to some extent, take the place of loans which would otherwise have to be raised for extraordinary works, and would be expended on works of a remunerative character in the Provinces finding the money, loans being reduced to the extent to which it would be unnecessary to have recourse to them, in consequence of the increased revenue from fresh taxes. Some doubt was experienced on this point in His Honour's Council, and he was hardly in a position to explain exactly what the views of the Government were.

His Excellency THE PRESIDENT felt quite sure that the views of His Honour the Lieutenant-Governor, and the grounds on which those views had been expressed, would be duly borne in mind by his Hon'ble friend Sir John Strachey when he made his statement at the next meeting of the Council, and that he would take that opportunity of explaining the views of the Government of India in regard to those matters.

The Council adjourned to Wednesday, the 16th January 1878.

CALCUTTA,
The 9th January 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 497 L D.—11-1-78.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 16th January 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndrá Mohán Tagore.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble Sir Shumshareperkash, the Rájá of Sirmur, K.C.S.I.
The Hon'ble Mumtáz-ud-Daola Nawáb Sir Muhammad Faiz Alí Khán, Bahádur, K.C.S.I.
The Hon'ble G. C. Paul.
The Hon'ble E. C. Morgan.

NORTHERN INDIA LICENSE BILL.

The Hon'ble SIR JOHN STRACHEY moved that the Bill for the licensing of trades and dealings in the Panjáb, the North-Western Provinces and Oudh be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerell and Colvin, the Hon'ble Nawáb Faiz Alí Khán and the Hon'ble Mr. Morgan and the Mover. He said—

"My Lord,—At the meeting of this Council last week, Your Excellency stated that I should be able to explain to the Council to-day the course which the Government proposes to follow with reference to the Taxation Bills which were introduced three weeks ago.

"His Honour the Lieutenant-Governor expressed at the same time a strong opinion that no unnecessary delay ought to be allowed in passing the Bills into law.

"He said that local legislation depended much on the shape which these Bills might take, and that until that shape was finally decided, doubt and unsettlement must remain in men's minds as to the extent to which their interests would be affected by fresh taxation. He said that this doubt and unsettlement were mischievous to the public and embarrassing to the Government, and besides this he urged this important fact, to which I myself drew the attention of the Council when the Bills were introduced, that the work of assessing the license-tax ought to be carried out by the European officers personally before the cold weather now passing away was over; otherwise the work would inevitably fall into the hands of Native subordinates.

"Similar representations have been made by several of the other Local Governments. It had originally been the wish of the Government of India that a somewhat longer period should be allowed to elapse before these Bills were proceeded with; but on reconsidering the question, the Government fully recognises the force of the reasons given by His Honour the Lieutenant-Governor for the opinion that the Bills ought to be passed without needless delay.

"If the measures proposed by the Government had been less favourably received, the case would have been different, and it might have been right to give more time for public discussion and criticism. The Bills, however, have now been before the public for very nearly three weeks, and it was a cause of much satisfaction to me to hear from my hon'ble friend the Lieutenant-Governor, that he was satisfied that our measures had been generally well received, and that the necessity for further taxation had been loyally recognised.

"The Government therefore proposes that the Bills shall now be gone on with in the usual course. I am about to move that they be referred to a Select Committee, and when the report of the Committee has been laid before the Council, it is proposed to proceed with the Bills as speedily as may be found convenient.

"I have only one other point to notice.

"At the last meeting of the Council, my hon'ble friend the Lieutenant-Governor expressed a hope that I would take an opportunity of explaining the scheme which the Government of India proposed to adopt in regard to the expenditure of the funds which we are now proposing to raise by fresh taxation.

"I think this wish of my hon'ble friend entirely reasonable, and before the Council is asked to pass these Bills into law, I shall endeavour to give the fullest explanation in my power in regard to this subject.

"I feel confident that I shall be able to satisfy the Council and the public that the resolution which the Government has proclaimed will be faithfully carried out, and that the proceeds of these new taxes will be expended for the purpose of providing what I have called an insurance against famine, and for no other purpose whatever."

The Hon'ble MAHÁRÁJÁ JOTÍNDRÁ MOHÁN TAGORE said: "My Lord,—I have listened with attention to what has been said by the Hon'ble Member who has just spoken, and I crave Your Excellency's permission to occupy the time of this Council with a few remarks. I feel sure that the people in general will in all loyalty willingly submit to the proposed taxation when it is shown that the exigencies of the State necessitate its imposition, and considering all circumstances, I am inclined to think that the proposed license-tax is the best that could be suggested—next perhaps to an income-tax with a high minimum of incidence. As a non-official member of this Hon'ble Council, I deem it my duty, however, respectfully to represent to Your Excellency the strong impression which exists among the people that there is considerable room for retrenchments in the Home Military charges as well as in the Army and Public Works expenditure here, and that no additional tax ought justly to be imposed on the people before such retrenchments have been effected. As to the practicability of the reductions, they are supported in their views by no less an authority than Your Excellency's distinguished predecessor, Lord Northbrook; and this Council will remember the correspondence which passed between the War Office and the Duke of Argyll when His Grace was the Secretary of State for India, with regard to the depôt and recruiting charges. I am glad to see that the Hon'ble Member in charge of our finances entertains similar views with regard to military expenditure, and although he said on a former occasion that Your Excellency's Government will endeavour by representation to the Home Authorities to effect necessary retrenchments, he has unfortunately for us been able to hold out little hope of success. Now, My Lord, the people of this country have no voice in the British Parliament, and they have no exponent of their views in the India Office; they naturally look up to Your Excellency's Government as the protector and guardian of their interests. I hope Your Excellency will allow that, as loyal subjects, they have a right to expect that this Government will not simply represent, but represent with all the force and earnestness which sincerity of conviction imparts, that it cannot consistently with justice impose fresh burdens upon

the mute millions mostly living from hand to mouth, until all possible reductions in expenditure have been effected. The generous instincts of the British nation and the love of fair-play which distinguishes them will, I feel confident, be on the side of justice to India, though the adjustment of the financial relations of England with India on an equitable basis were to affect their own pockets and interfere with patronage in certain high quarters. But we are aware that reductions in expenditure cannot be made all at once, while the deficit in the revenue must be immediately met. Taxation, therefore, is a matter of necessity. There is a widespread apprehension however which, I confess, is not quite unfounded, that taxes once imposed are not easily or soon removed. For this reason I would take the liberty respectfully to suggest that the Select Committees to which the Taxation Bills are to be referred may be asked to give their special consideration to the question whether the Bills should not be so modified as to limit their operations to a certain period,—say two or three years, so that there may be ample time for representation to the Home Government and the British public of the grievances of which we complain. This course, I submit, will be an assurance to the people that Your Excellency's Government is in earnest to do all it can to effectuate reductions, and will inspire them with a confidence that no new permanent burden will be laid upon them until all efforts of Your Excellency's Government to persuade the people of Great Britain to deal justly by the helpless millions of this their great dependency have absolutely failed.

"One word more, My Lord, and I have done. Regarding the application of the money to be raised by taxation, with every deference to the Hon'ble Member in charge of the Bills, I am humbly of opinion that it should be formed into a separate fund with a separate account, and not be merged into the general Revenue, so that it may satisfy the people that it is what in reality it is intended to be, a separate famine fund; they will also have an opportunity of knowing what portion of it, if any, is applied to the repayment of previous famine loans, and what portion is spent on the construction of famine insurance works, and how far those works answer the purpose for which they are intended; for, not to mince matters, there is a general conviction that some at least of the irrigation-works which have been executed have turned out to be, as Colonel Corbett has shown, works of experiment rather than of experience."

The Hon'ble SIR ANDREW CLARKE said:—"MY LORD,—The Council will, I trust, permit me to offer a few observations which, from the relations that are now recognized to exist between Famine and Public Works, may not be wholly unacceptable or without interest. And the more so, as the administration of the latter being my particular function, some declaration of our

policy may be looked for in the light of the teachings of our recent sad experience.

"It is hardly time for us to review the history of the famine that is passing away, though not yet completely gone, in the Deccan and Southern India. Scarcity and high prices of food, there as well as in other parts of the empire, still remain and render it as difficult as it is premature to come to any finite conclusion as to the exact cause of the calamity, or to dogmatize on the remedies that should be applied to meet the recurrence of famine in the land.

"Unhappily, as handed down to us, we have many and varied precedents both administrative and economic, not all consistent however, and not all wise or good, for us to accept as standards for our guidance, or as models to imitate; some, in fact, are rather the reverse. You, my Lord, have discussed this section of enquiry in your Minute of last August. But whether looking backward or forward, our object is to ascertain what is the policy to accept, the practice to adopt, in order to enable us, if we cannot abolish famine—an end I fear hopeless to be attained—to do at any rate what we can to limit its area, to localize its scourge, to mitigate its intensity.

"But here I may ask, though no complete or satisfactory answer, I fear, can yet be given, to what are high prices, scarcity or famine due? And why in recent years have these been so recurring, so severe, so virulent?

"Are there causes, possibly as potent but silently at work, to bring about these visitations, besides mere atmospheric phenomena?

"Is there less thrift than formerly? Is the surplus of full harvests no longer stored, but sold, and the proceeds dissipated? Has population increased and in proportion food produce diminished? Have edible grains given place to more paying crops?

"It is possible that these causes are at work here and there, in isolated places, due to special circumstances, but I am inclined to think they are not by any means general. Their consideration, however, calls for thorough scrutiny and investigation, a duty pertaining, in its early stages at least, to the Economist and Statistician rather than to the Engineer.

"In connection with this, I would mention one incident of grave practical moment in the late famine. It is known that more than two-thirds of the autumn and spring harvest failed over an area inhabited by thirty millions of

people, and that during the period, some ten months, of the greatest intensity of this famine, the food imported could only have helped to feed one-third of this multitude: yet at the instant the fresh harvest was assured, prices dropped and import ceased. This might lead to the assumption that Southern India held within itself, even when its harvests had failed, stores of grain nearly sufficient to feed its people for the whole time, and yet we were assured on all sides at the end of last, and beginning of this, year that there were no reserves of food, or next to none, in that country. Is it impossible to devise a means by which our knowledge on this all-important point may in the future be, if not absolutely reliable, at least not absolutely *nil*?

"Again, the facts of the grain-trade of Northern India present some features which it may be worth while to note, and which suggest that vast reserves are still in hand, notwithstanding the enormous export-trade of the last two years, and particularly of the present year.

"The export of wheat from Calcutta on an unusual scale commenced in May 1876, just after the spring or wheat-harvest had been garnered. Wheat then sold at Cawnpore for 27 seers per rupee, and the export rose from 150,000 maunds in April to 540,000 maunds in July, but checked (apparently by a rise in price in July to 22½ seers) fell in August to 2,65,000 maunds. At the end of August the price again fell to 27 seers, and the exports rose to 560,000 maunds (the maximum of the year) in October. It was about this time that the signs of approaching famine were unmistakeable.

"From the end of August, the price rose till nearly the middle of December 1876, when it was 21 seers for the rupee, and the exports in January 1877 fell to 1,20,000 maunds.

"Now it is since January 1877 that the extraordinary export has taken place—thus anticipating by at least three months the course of trade of the previous year,—but prices remained constant from December till the beginning of April, at 20 to 21 seers.

"War was declared in Europe on the 23rd April 1877.

"By May the exports had risen to upwards of one million of maunds, and with a slight check in June (the price had risen to 16 seers in May) reached its maximum (1,270,000 maunds) in August, the price having been 19½ seers early in June and 18 seers early in July.

"From June till the early part of August there was no great variation in price, but in the latter half of that month the price rose to 15 seers,

reaching its maximum in the latter half of September, when it stood at 11 seers. The autumn crops of Northern India had failed, and the export-trade fell suddenly to 440,000 maunds in September, was 255,000 maunds in October, and 235,000 maunds in November.

"Thus, so far as we can see, the enormous abstraction of grain for export from Bombay as well as from Calcutta, in addition to what was sent to the famine districts of Western India, did not cause a greater variation in the price of wheat at Cawnpore between December 1876 and August 1877 than is represented by a difference of 4½ seers in the quantity obtainable for one rupee.

"But the moment one harvest had failed and the sowings for the next were in jeopardy, the law of self-preservation appears to have asserted itself, and we may, I think, deduce from the rapidity of its action that the reserves are great, and if, as I was informed, more than 100,000 tons of shipping were left without freights, we have an index of the trade which had been reckoned on, by those most fitted to estimate the power of the supply, to equal the demand.

"No doubt there are tracts of country which, formerly growing food for home-consumption, now grow produce for export, and depend for their support on supplies from without; but accepting this, what follows will, I think, show that this is a source of satisfaction rather than a cause for regret, since in the restoration of the balance we find the very weapon with which to fight famine: for the fleecy capsules of the cotton plant, or the jewelled diapers of the poppy, feed their cultivators with no less certainty than the crops of the rice swamp, or of the wheat field, feed those who raise them.

"The Agricultural returns of India, from which much might have been gleaned, are not very complete, or rather they are not as yet in a very accessible form, but Mr. Bernard has been kind enough to give me a note which will make a review of them intelligible. He says—

"'The best return I have been able to get of the area cultivated and the area under food crops in different parts of India, incomplete it is true for some Provinces, but still sufficient for our purpose, shows that in our most thickly-peopled Provinces there are about 75 to 80 acres of land under cultivation to every 100 persons, and that out of those 75 to 80 acres 65 to 70 are under food crops. For instance, Oudh with its dense population of 14 millions has 9 million acres of cultivated lands, of which 8,200,000 acres bear food crops. Madras has 21 millions of acres under food crops for its raiyatwárí population (excluding zamíndáris) of about 27 millions. Mysore has 4½ millions of acres under food for its population of 5 millions. British Burma has 2½ millions of acres under food with a population of 2¾ millions. The Central Provinces, where the land is poor and cultivation is slovenly, and where there are grown much

cotton and oil-seeds, have only 13 millions of acres under food crops out of a total 18½ millions of cultivated acres, but then its population is only 9¼ millions. There are great differences in Provinces, for instance British Burma exports annually 800,000 tons of rice, that is to say, it produces from two to three times as much food as its people require. Assam, on the other hand, has also a very rich soil, a heavy and never-failing rainfall, enormous areas of virgin land, yet she does not produce food enough for her people, and has to import food from thickly-peopled Bengal. But so far as I know, Assam is the only Province in this case, and all the other Provinces of India produce enough food for their own support and for export as well.

"'A great deal has been said of late years about the vast areas put down with opium, cotton, indigo, seeds and other crops, to the exclusion of food crops, and to the exploitation of India for the benefit of rich traders and of distant populations. But much of this kind of talk is due to ignorance; for out of the cultivated area of British India, estimated at about 160 millions of acres, only about 580,000 acres are under opium, and little more than one million acres under indigo, 8,000,000 oil-seeds, and 10,500,000 acres under cotton, most of it for home-consumption in India, while at least 130 millions of acres are under food crops. And an acre of food crop land will in an ordinarily good season support two people if the produce of one Province be taken with another. In Burma and Bengal one acre supports three or four people; in the Central Provinces and Bombay it supports less than two. No doubt the area under such crops as oil-seeds, jute and oil-bearing roots has increased greatly during the last 10 or 15 years. But then the total area under the plough has also increased vastly. In the Madras Presidency alone I find that Mr. Dalyell, no mean authority, wrote in 1867 that the cultivated land in certain districts of Madras had from 1856 to 1866 risen from 10 millions to 16 millions of acres, so that it is quite safe to say that the area of food crop land in India is now as high or higher compared to the population than it was in old times, notwithstanding the great extension of non-food staples like linseed and rapeseed.'

"My object in calling attention to this statement will be patent and, I trust, conclusive. It is this, that even if Drought and Dearth were more extensive and widespread than they have been in the most disastrous of Indian famines, the empire can still from its own soil feed itself, and I say this with the full knowledge, that we have drawn rice from beyond the limits of the empire.

"The significance of this fact should go far to reconcile us to accept, not with cheerfulness certainly, but with resignation, the proposals of my Hon'ble Colleague; and this consideration recalls me to my more immediate object that, though the measures for which we now seek assent are the premium which we must pay for insurance. (I fear only for a part insurance), and though it is to be hoped that sweet nature will give us a little longer time for recovery and restoration before she again withholds from us her bounteous and fruitful gifts, we must in wisdom and with prevision and energy, use the opportunity of husbanding with knowledge, as well as of

distributing with certainty and rapidity, those gifts so that our peoples may not again suffer as they have in the past.

"Severe as the dearth and consequent distress have been from which we are now emerging, there has been no dearth of suggestions for the remedy and prevention of a similar state of things. These suggestions are as varied in their scope as they differ in the means required to give effect to them, ranging from a scheme to cost only a hundred millions sterling—but the money did not come with the scheme—to the simpler and certainly less costly introduction of a patent two-wheeled cart for horse or bullock draft—my friend forgot to tell me how the cattle were to be fed—or to a cheap and simple wind-mill for pumping water, but I was not told how the water was to be raised when there is no wind, the normal atmospheric condition of India when water is most wanted.

"And now, my Lord, in what I am about to say on the particular specific that has been so boldly proffered to us, on many sides from many irresponsible authorities, as the certain cure and remedy for all our ills, I desire most emphatically to record the fact that, though not an Irrigation Engineer myself (for my experience in this field of my profession has been very limited), I have approached the consideration of the subject as applicable to all India, prejudiced in favour not only of Irrigation, but also of Inland Navigation, and that one of my dreams has been the hope that during the time I was to sit at this Council Board I would unite the waters of the Arabian sea with those of the Bay of Bengal by an inland channel.

"The stern realities that confronted me have dispelled this illusion, but at any rate this bare statement should clear me from the charge that because I have had larger experience in Railways, I am therefore biassed in favour of Railway enterprises.

"The construction of Irrigation and Navigation-works must strike the most heedless as the most obvious way of preventing famines. Water in ample abundance, rushing and racing to the Ocean only to be spread and lost in its broad bosom, has to be but bitted and curbed by dam or bund, and then so distributed as to fertilise the wide level plains of India, and to secure food and life for man and beast.

"A step further, and these running rills are deepened, extended and converted into silent highways, to bear to foreign markets the redundant harvests

of the tracts they traverse, and to bring back argosies laden with the wealth of other lands.

"This seemed simple and captivating, and in India, with its tropical sun, its certain (?) monsoons, and the prodigious rainfall along the Ghâts and in some localities, nothing should be more sure.

"Others again having studied well our geography, have seen in the perennial supply drawn by our northern rivers from the eternal snows of the Himalayas an inexhaustible source of national wealth.

"Have these rivers been neglected ? A glance at a map showing the districts of Northern India protected from drought by irrigation-works will give a graphic answer.

"These protected areas form, it is true, but a small portion of the entire surface of the Continent, and of the balance left, little can unfortunately be reached by this perennial supply; for the area within its influence ceases a little south of the Jumna, and from Rajmahal on the East away to the far South and West all the immense region of Central India bounded by the Vindias falls to the Ganges, and is inaccessible to canal-irrigation.

"This area, then, and that again to the South of the range I have named, may be said to be wholly dependent upon rainfall. And we are thus brought to see that, vast as is the country we have to deal with, mere magnitude is but one element of the problem to be solved.

"Much, very much, has already been done, especially in Southern India, and much more still can be, and will be, done in storing water; but the lessons which past and recent famines have taught us are that territories dependent on reservoirs, or 'tanks' as they are better known in India, offer, and at the best can offer, only an intermittent protection under the phase from which we are now emerging.

"Multiply these tanks as we may, they will stand us in but little help in such a famine as we have just passed through, due, as it has been, not to the failures of a single season, or of a single year. Deficiency of water in them originally, and ceaseless evaporation, are the influences which dry up one and dry up all when once the supply fails. And here, before I pass from this subject, I would desire to say that, although confidence in tanks cannot be assured, dependent as they are on the doubtful factor of local rains, yet in Madras and especially in Mysore, where there is the enormous number of 37,600 tanks ranging from the size of a village reservoir to a respectable-

sized lake of 14 square miles, much has been done in recent years to place them in a condition of safety, improving, as far as practicable, their capacity. But in this direction still more has to be done, and every effort will be made to insist on the continuance of systematic action in perfecting these works.

"To replenish these reservoirs from other than their natural catchments, as has been suggested, by means of channels led off from the larger rivers, would, in nearly all cases throughout the centre of the peninsula, where the scourge of famine has been heaviest, be either wholly impossible, or relatively so if financially considered.

"The tempting idea of storing up the flood wave where the streams first issue from their birth place in the bosom of the Western Ghâts, unless in a very few exceptional positions, appears to be as deceptive as it is luring, judging from the experience of works of this character in the Bombay Presidency. No less than 27 works more or less of this type estimated to cost over 2 millions sterling have there been either completed or commenced as Famine Relief Works, with, it is much to be feared, little prospect of paying for many years to come.

"The greatest advocate for schemes of this character has lately stated that 10,000 such reservoirs with an unfailing supply could thus be constructed, and instanced as a case in point one capable of storing 1,600,000,000 cubic yards of water and of commanding 'nine-tenths of the whole Peninsula of India,' which project, however, had in vain been pressed on the attention of Government.

"The Officer whose duty it was to investigate this project, and who himself was at first most sanguine as to its success, informs me that, after several years' gauging the river which was to supply the reservoir, the available quantity of water turned out to be only one-fourth of that calculated above; and further, that judging from the experience of three other works of a precisely similar character which were experimentally carried out in the same chain of hills, the fact was clearly demonstrated that such works could not, at least under existing conditions, be made to pay. The land is there, the water is there, but the inducements hitherto held out to the cultivators to embark in irrigation have met with the same disheartening response as in the case of the Madras Irrigation Company's Canal, which has hitherto disappointed in the most marked manner the expectation held out when it was projected. I have said it would not pay; but to my mind this is a matter of secondary impor-

tance, if only it would not fail. But as a security against famine in times like those we have passed through, it would be a broken reed to lean on.

"In these situations, with *régur* or other unsuitable soils, rapidly sloping ground, and other drawbacks, the sparsely scattered, ignorant and indigent cultivators, who perhaps have had no previous acquaintance with irrigation, fail to realize the advantage of incurring the outlay requisite for terracing their fields (often in such localities a serious charge), and it is thus to be feared that generations must be born and die before appreciable progress can be made towards the desired goal.

"Until the general conditions with which we have to deal alter materially, or schemes hitherto tried without success solve the difficulty of bringing water to the land without thereby imposing an unbearable burden on the country, we must accept as a fact that close on 550,000 square miles of the 740,000 comprising the Great Provinces of the Empire (exclusive of the Native States, Burma, &c.) cannot receive protection in any broad sense, and the vision of the 10,000 great reservoirs conjured up by the enthusiastic projector must be allowed to fade into dreamland.

"Another distinguished writer who has been quoted as a great authority, and whose opinion I admit is deserving of every respect, has stated that the great tracts of the Panjáb might, at the cost of some 10 millions, be irrigated without the risk of pecuniary loss, and that this would be an insurance against drought.

"This may be true, but the question is not entirely connected with famine, and considered from an irrigation point of view, the scheme has been already considered and abandoned, because the taxpayers of all India would have to find the money to execute it, and when executed there would be for generations no people to enjoy it, the district containing but a handful of inhabitants.

"The same writer when criticising our past expenditure in the Tirhoot famine would also have that country irrigated. Press these principles to their logical sequence and apply them to all the area of India, and we are brought face to face with an outlay of some £ 700,000,000 sterling!

"For a moment however admitting the dictum that 'there is not a district in India that could not be more or less irrigated,' and assuming that only 100 millions of acres (say 156,000 square miles) of its whole surface could have this great blessing conferred on it, at the rate specified, namely, £2 per acre (the Bombay works give Rs. 23½ per acre for protection exclusive of indirect

charges), a capital outlay of 200 millions would be needed, and an annual burden imposed on the people of 8 millions sterling to cover the interest charge at 4 per cent.

"A proposition so startling might be allowed to answer itself, or still better, by adopting an argument already used that the taxation of India 'is almost without limit so high that you cannot turn the screw a bit more,' be condemned by those who have brought it forward for grave consideration; but as the best means of bringing home the very precarious nature of the revenue derivable from these protective works, the following sentence may be quoted from the Bengal Revenue Report for the past official year:—

"'In Midnapore the rainfall was 75 inches more in the opinion of the raiyats than is good even for rice. Hence Canal water was at a discount. Those cultivators who had executed leases at the commencement of the season regretted that they had done so, and the result seemed to justify their view of the case, as numerous careful experiments made by both Revenue and Engineer Departments showed that the outturn of the irrigated crops was in no degree superior to that of the unirrigated. This following upon a previous year of good rainfall has brought the Midnapore Canal into the greatest disfavour. There was a large falling off in the leased area, which has again been followed by a very much larger decrease in 1877-78.'

"This has the greater significance when it is recollected who the author is, and his devotion and attachment to this branch of his profession, for no better Irrigation Engineer exists in India than Colonel Haig.

"Again he observes—

"'The previous year having been a very favourable one for the unirrigated crops, the area leased for in 1876-77 fell from 55,995 acres to 32,681, but as the season advanced and its real character developed, the lessees repented of their engagements, and endeavoured to evade them by every possible means, first clamouring for a remission of the Government demand on the ground that the water was of no value to them (which, as it has turned out, was true), and when this was refused, endeavouring to prove that water had not been properly supplied. The result has been disheartening for both Government and people. The revenue demands were enforced mostly by process of law, the people resisting them to the last. Very little of the demand for the year was recovered during the year, but the recoveries of arrears of former years were so vigorously carried on, that the actual collections exceeded those of any previous year except 1874-75.

"'It is impossible to record this result with any satisfaction, as it seems certain that the arrears and the difficulty of enforcing payment were mainly, if not solely, due to the extreme poverty of the people. It is melancholy to read of 12,714 certificates having been issued for the recovery of the arrears after abandoning all claims for less than one rupee, and making remissions to a large extent on other grounds; and this in a district where the irrigators

have, as a rule, dealt fairly with Government, and have always been ready to pay when they had the means. One can hardly read the description of the revenue operations of the year, and it may be added, of the previous years, without a wish that, if the state of the cultivators is such as it is described by the Collector and his subordinates, irrigation, which, according to them, only enhances the difficulties of the people in ordinary years, had never been introduced at all. The Deputy Revenue Superintendent remarks—'The most potent cause about the gradual decline of the area leased is the indebtedness of the Midnapore raiyats.' They are involved over head and ears; and it is a matter of infinite regret that their debts are increasing as their connection with the Government irrigation is growing older. Excepting during the year under review, the canal irrigation as compared with the unirrigated crop has always increased the yield from 3 to 5 maunds in the acre, but the Government irrigators are not in a position to benefit by it; all that they obtained from the fields go punctually to fill the coffers of the Mahájans, and they have finally to borrow money for the payment of the water-rate. The increased yield of the crop, if reserved for the liquidation of the Government debt, is sure to prove more than enough for the purpose; but no notice is taken of it, and when the irrigator is forced to pay for the irrigation of his land, he blames the canal for the increase of his debt.'

"'Again, attachments and sales of the debtors' property were very frequent, and where they had not the desired effect, the debtors were arrested for the realization of the Government dues; and it is now a very common saying within the irrigable area that the major portion of the Government irrigators have been deprived of their plough-cattle for the payment of the water-rates. This is not very untrue, as the most valuable saleable property in the possession of the cultivators are the bullocks; and where we could catch hold of them no other movable or immovable property belonging to them was attached or sold. The number of sale notices and warrants for the arrest of the debtors issued during the year under review was unusually large, yet from the well-known poverty of the Midnapore raiyats, the result has not been as satisfactory as was anticipated.

"'The part played by the Zamíndárs and Mahájans in the matter is shown in the following extracts from the Deputy Superintendent's reports :—

"'The Zamíndárs, whose resistance to the spread of irrigation was hitherto passive, have now broken out in action, and many of them have openly prohibited their tenantry from using the canal water on the penalty of incurring their severe displeasure. They have done this with the view of securing the realization of their own dues, and of preventing their raiyats from increasing their debts unnecessarily as they call it. The Mahájans also have been telling the raiyats not to resort to the canal any longer.'

"'For the Collector's explanation of the causes of this state of things reference may be made to the Revenue Report of 1875-76, paragraph 36. It should be noted, in passing, that the year 1876-77, in which coercive measures on so large a scale were found necessary for the realization of the Government revenues, was one of exceptionally high prices, and so far peculiarly favourable to the raiyats.'

"I have at length, and I fear to weariness, made these quotations; not that I desire to repeat them in the remotest degree to depreciate irrigation,

but, to show that the subject is surrounded with other difficulties, perhaps more obstructive and more powerful than those which the Engineer can overcome or the Financier deal with.

"What has been done already in the way of this artificial irrigation in parts of India, its cost and its results, may be rapidly sketched.

"Take first, my Lord, this great Province of Bengal, with its 62,000,000 of population, and its 48,000,000 acres of land under food crops, and its 7,500,000 acres producing industrial staples of one kind or the other, and consider its three great irrigation schemes of Orissa, the Sone and Midnapore.

"These three projects protect generally some 1,231,000 acres, or 2·2 per cent. of the whole cultivated area of the Province; they will, when completed, fully preserve that area from drought under the worst conditions yet known. In the last year water was taken from them for 360,000 acres, or only a little more than ½ per cent. of the total lands under crops. To obtain this result, we have already spent close on 4½ millions sterling, and a little under £4 an acre will have been spent when the works have been completed.

"In the Panjáb, exclusive of ancient works, nearly 3½ millions sterling have been spent in irrigating a little more than 1 million acres. The Sirhind project, now drawing to completion, promises well, but none of the other numerous schemes for further irrigation in the Panjáb hold out fair prospects of immediate success.

"The same difficulty applies to the prosperous Provinces of the North-West, where £5,500,000 have been already expended in irrigating, according to the last returns, some 1,390,000 acres, and in prosecution of works which will eventually command a much wider area. This accomplished, the Ganges and the Jumna, the perennial rivers of these regions, will have given up possibly all the treasures they have drawn from the glaciers of their source.

"An author, one indeed of our own circle, has in an English periodical, alluding to our not having constructed the great Sardah Canal in Oudh, twitted us now in India, for locking the stable door after the horse had been stolen, and has compared us to a father who has fee'd the doctor, but has forgotten to feed his own child.

"In answer to this, I shall only quote an extract from the Secretary of State's Despatch of the 9th April 1873, in which he says:—

"'At a time when the finances of India are burdened with the pressure of so many and such important public works, it was obviously impolitic to persevere in a vast undertaking

costing upwards of 3 millions of money for the purpose of bringing water to the estates of landholders, who protested against the project as being unnecessary and a source of disease, while the opinions of the great majority of the local officers in Oudh, endorsed by every Chief Commissioner of the Province, and shared in by the Lieutenant-Governor, were that the proposed canals were not wanted and would not be a financial success.'

"Let me pass on to Madras, where, as far as I can gather from the facts, some six millions sterling have been spent on irrigation-schemes, or rather where this amount has been calculated without taking into account the dead stock value of the ancient Native works. The results are certainly better there, for whilst in ordinary years some five million acres receive the full benefits of irrigation, in the very worst years one million six hundred thousand acres are effectually protected,—yet Madras, with its 32 millions of people, has even then but seven per cent. of its agricultural industry secured from disaster in years of ordinary rainfall, and a much smaller area in years of drought.

"In Bombay, exclusive of Sindh, with 19 million acres under cultivation, some 17,000 can now be irrigated, and when the works which are now under construction are completed, costing at present estimates more than two millions, it is hoped, at all events, some eight to nine hundred thousand acres may be protected.

"I could go on giving dry facts, but in themselves they would, I fear, convey but a small idea to the mind of the vast work already accomplished in this country, far exceeding all that has been hitherto done as regards irrigation by collected Europe with the great canals of Italy and the reservoirs and dams of Spain; and I should assuredly fail were I to undertake the still greater task of practically bringing home the boundless nature of the effort which some would have us undertake, were we to rely on irrigation alone as an universal insurance against Famine.

"It must also be distinctly borne in mind that the early Irrigation Engineers, who have left an imperishable name in connection with the works of their creation, naturally, and indeed necessarily, selected those fields in their enterprise, where all the elements of success lay in happiest combination. Where in fact—

"'Mill sites fill the country as thick as you can cram' em,

An desput rivers run about a' beggin folk to dam' em.'

"One of these Engineers, not the least distinguished, nor the least loud in his upbraidings at the shortcomings of those whom he has left behind

in India, for not following his good example, has quite forgotten that he has himself plucked the choicest plums off the tree and has left us only the kernels. Take for example the Kistna Delta Irrigation alone. What have we there? a garden it is admitted. But then, from the 31st December till the 1st July, it places under contribution, and claims exclusive right over, all the water from a catchment of not less than fifty times its own area.

"Having now, however, entered upon those tracts where these advantages no longer exist in such profusion, the least want of prudence may, by bringing about failures, injure the very cause which those, who most earnestly desire the extension of irrigation, have most at heart.

"I think that I have, however, sufficiently shown that the administrators of this country, whether civil or professional, have ever valued the precious treasures of its rivers and storm waters.

"In short, as far as I can ascertain, we have spent some 21 millions sterling, and for this we have some 14,000 square miles actually irrigated with more or less certitude as regards permanency of supply. In other words, we have had to pay £ 1,700 for each square mile, or something under £ 3 an acre.

"Even if we had the water at command and it were otherwise practicable to protect all the agricultural land of India, it would demand on this basis, an outlay of at least some three hundred millions sterling. This would build some 40,000 miles of Railway, the fourth of which would give us an insurance not against famines, but certainly against extreme scarcity, distress and death from want.

"I said just now *if practicable* because, in order to irrigate, we must have water, either annual from heaven or perennial from the snows of the Himalayas. The first we must regard, I fear, as precarious and uncertain, and as for the last, great as is the extent of the region over which the snow waters have their influence, and though possibly more may yet be garnered of their generous and perpetually recurring flow, we have already in the Panjáb and in the North-Western Provinces, especially in the latter, appropriated so great a quantity of it, that we fear we are approaching the limits of the supply. This last year we are told that the Ganges Canal was strained to its utmost, and at the tail of its distributaries the cultivators got but a scant supply; thus rendering more doubtful than before, the wisdom of drawing off any further supply for the proposed Eastern Ganges Canal.

"It is in years like the past one that the great advantages of irrigation are so apparent. We have evidence that the undeveloped Sone has already saved harvests, which must otherwise have perished, of more than a million sterling in value, whilst in the recent visitation in Madras the irrigated districts of the Godavery, Tanjore and Trichinopoly have practically paid their land-revenue in full. The Kistna District, where the Irrigation project is not complete, has had remitted some 15 per cent.; but in the unirrigated districts, remissions ranging from 30 to 70 per cent. have prevailed, whilst they have drawn from the irrigated districts food to the value of some £150,000 exported by sea alone.

"I will not now trouble the Council with any observations as to the Embankments or Inundation projects of parts of Bengal, of Burma, or of Sindh. I only allude to them at all as significant of the fact that the Rulers of this country, Native as well as British, have in more ways than one, in the present as in the past, thought out the difficult problems that this struggle against nature has from time to time presented to them.

"So also I will not now say anything of the water-logging of land, of the raising of the spring level, of fever and other alleged evils, which even if I admit as existing at all, I admit only to say that a remedy for them by drainage exists, though its cost, a heavy item with low-lying stiff clay soils, must be added to that of the original works.

"Let me, when mentioning drainage and the necessity for applying the severest examination to irrigation schemes, quote what one of the apostles of irrigation himself says when speaking of promoting indiscriminate and widespread irrigation—'We should,' he says, 'make sure that we may not turn the irrigated districts into vast swamps, decimating the inhabitants with fever, and reducing, instead of increasing, the fertility of the soil.'

"And here I may remark that the nature of the soil has been a factor which has been too often wholly ignored not only in schemes projected but since completed.

"I trust it will not for one moment be thought, because I have said what I have, that I am in the most remote degree opposed to, or the enemy of, irrigation; far from it. I believe I am—by the course I have taken in applying to every scheme and estimate that has come before me since I have taken my seat at this Council the closest enquiry and the most minute scrutiny as to the soundness of the one and the accuracy of the other—a truer friend to irrigation than the romantic enthusiasts who can only see that in water there is

a cure for every ill, or the orator who, from the vantage ground of his great eloquence, makes easy the task, and would guide us through a maze, of which it is reserved for statesmen yet unborn to find the clue. So in saying this I wish it to be understood that, we do not purpose to neglect in the future irrigation-works which give prospects of being not only beneficial in ordinary years but in years of scarcity. Many projects are now under enquiry of which I hope this may be said, though of some of them the full cost of which would come to some £ 15,000,000 sterling, I find it already recorded that 'none of them are so urgently needed, in view to the prevention of famine, as to render it essential to extend financially the scale of operations in irrigation-works.'

"I have already alluded to the projected through water communication from Karáchí to Calcutta, estimated to cost £ 5,000,000. If this line of navigation, passing as it does across the Peninsula through regions flooded by the great waters from the Himalayas, stretching to both seas, traversed by a net-work of rivers, flowing through a natural physical formation—fulfilling in short all the Engineering conditions favourable to inland navigation—offer little or no prospect that, until years have elapsed, its practical influence as a means of communication will be felt, and that as a reproductive work, there is but little hope for any return, how does the problem stand in other parts of Hindústán?

"Here and there, as around this city, local works of this nature, isolated and apart, have been a success, and many other navigation canal projects are likely, in this limited form, to be carried out from time to time; but any connected system of internal navigation seems a remote possibility.

"The irrigation and combined navigation systems of the Godávari and Kistna, projected to open up traffic from the Eastern sea-board to the country of their sources and even to the Western Ghâts, and ultimately to debouch at Carwar on the Western Coast, give little prospect or encouragement for us to anticipate from them the great benefits or facilities predicted by their projectors. It is not difficult to understand this when the main link in the chain, that of the Madras Irrigation Company, is closed for six months of the year, because the source of its water-supply is closed to it for that time! Even if this source were a constant one, the extension of the navigation to the Coast is barred by physical difficulties of apparently an insurmountable character. I may be told all this can be remedied by storage tanks. I grant this might be possible, but without counting their cost, or other difficulty of even a more serious nature which, as a financial

undertaking, will make the original scheme a still more hopeless affair than now when the returns on the work do not come within a lákh per annum of the maintenance and establishment charges irrespective of interest on capital, recent experience tends to show that these aids will in the hour of our direst need fail us.

"Still I do not desire to condemn these schemes altogether, and I hope to see something practical done with them; possibly, a remodelling of the works may ensure better results.

"The East Coast Canal, the most promising project of all, will demand, in order to secure its ultimate success, the solution of difficulties which will try the skill, genius and daring of another Cautley, owing to its having to cross the drainage of the whole Peninsula.

"I fear, then, that as far as our knowledge goes, we cannot look forward to being able at any early period in India's future to see established a connected system of inland navigation. No doubt in districts favouring their construction we shall see navigable canals introduced and extended, but, judging from the past, their use and general adoption must at best be necessarily a matter of slow growth, and in the centre of the Peninsula, where they would be of the utmost service in case of the recurrence of any such famine as we have now passed through, it may be doubted whether any connected line of real utility could be constructed with advantage.

"Accepting the difficulties of the position as thus briefly pourtrayed, it is evident that the only practical course at the present moment is to recognise the mutual inter-dependence of the different parts of this vast country, and provide the means of distributing the surplus of one part to meet the deficiency of other parts.

"Happily we have not suffered simultaneously throughout India. The surplus produce of one part has been available for transport to other parts, and the enormous export of wheat which has been concurrent with the late calamity has shown that India has been able as a whole to produce more than it could consume.

"I do not lose sight of the fact that the people of Southern India are not a wheat-eating people, but from the experience of the late famine and of that of 1874, it is evident that the calamity must be indeed frightful when India herself and the neighbouring rice-producing countries accessible by sea cannot feed any afflicted part.

"Even if on the whole empire the scourge of famine fell, and the food of its people had to be ocean-borne, how entirely dependent must the country still be on its internal communication!

"The point, then, at which I have arrived is that land communications have been our main stay in the recent famine and must ever be.

"I do not purpose to enter again upon the vexed question of waterways against railways. Even could I bring myself to consider that the former were possible in places where the latter exist, I could not shut my eyes to the facts which are patent to every one.

"We have a system of railways and we can say that they are now paying investments in the matter of direct returns. These railways have taught the people the advantages of rapid locomotion, and the merchant and trader know well without such teaching the value of the Telegraph and of the Railway in the matter of quick returns. The railway system must continue to expand and will expand till every inhabitant of India is within 50 to 100 miles of a line.

"But there is an argument for Railways which has especial force in a time of famine. A grass famine may be said to be as bad as a grain famine. For if the cattle on which the tilling of the ground is dependent cannot get fodder or even grass, the people are indeed in a bad way. Their only resource is to take time by the forelock, as thousands have done in Upper and Central India in the course of the last few months when scarcity threatened, and, as in the case of a water famine, emigrate to distant tracts in order to save their cattle.

"We have not neglected the extension of Railways in connection with the lessons taught us by the famines of the last few years. The Northern Bengal, the Tirhoot, and the Irrawaddy Valley lines all received an impetus from famine if they do not owe their early existence to it. The recent calamity has precipitated the construction of the Dhond-Manmar line into an almost accomplished fact, and has given a stimulus to at least two other lines in Southern India. Similarly the threatenings of scarcity, now happily almost passed away, which came upon us a few months ago, have given an impetus to the projected lines of Central India and Rájputána.

"The Government has not hesitated, notwithstanding the severe strain upon its resources, to devote during the present year upwards of a million sterling to Railway lines over and above what it had arranged to spend this time last year.

"And whatever views may be held on the subject of Railways, there is this justification for their extension, that since October 1876 they have carried into the heart of the afflicted districts upwards of one and a quarter million tons of food-grains, representing the supply of 7½ millions of people for 12 months at 1lb. per head per diem. But continuous as has been the inward current of food, the work of the Railways has at times been far heavier than would be gathered from the even distribution of the quantity named over the entire period. Thus, in the three months ended December 1876, the Great Indian Peninsula Railway carried into the districts afflicted nearly 27,000 tons monthly, besides the larger proportion of the grain (44,000 tons in the three months), exported by sea to the Southern Mahratta ports of that Presidency.

"In July and August of this year, when the intensity of the famine was at its maximum, that Railway carried almost the same quantity.

"And during those two months the Madras Railways distributed almost 200,000 tons of food.

"The effect of a prompt supply of such a quantity of food can only be estimated by a consideration of the direful effects of its non-supply, and I shall not be accused of exaggeration when I say that the Railways have saved Southern India.

"The work done by a Railway is only partly appreciated, unless the distance over which the goods are transported is considered.

"The rice exported from this port, Calcutta, was not carried over any great length of Railway, but the wheat of Upper India, which was carried in large quantities to Puna and even as far as Bellary, and the grain of the Central Provinces, was carried over hundreds of miles descending and ascending the Western Ghâts. The waste of power over the Ghâts and the risk attending it have been eliminated for all time by the construction of the Dhond-Manmar line.

"But vital as is the assistance which the Railways have afforded, it must not be left out of sight that this aid was rendered with a concurrent unprecedented export trade, and, consequently, augmented general traffic.

"Thus, in the first half of the current year, on all the Railways of India, there were about 4½ millions of tons of goods lifted against 3¼ millions in the corresponding period of 1876.

"The pressure during the past year has been very great, and no doubt more or less loss and inconvenience has followed from this strain on the resources and means; but considering the distances traversed and the consequent impossibility of preventing detention of rolling-stock, the working has, on the whole, been creditable to Railway management in India.

"In considering the effect upon the English railway system of the construction of the Channel Tunnel, the diversion of rolling-stock to continental railways has been discussed as a matter which would call for very special arrangement. Our English Railway Managers would not, I apprehend, view without misgivings the concentration of a moiety of their wagon-stock at Berlin, Vienna or St. Petersburg; yet the diversion from the lines of Northern India of a couple of thousand wagons was a frequent occurrence during the recent pressure, and on one occasion the number of wagons thus absent was close upon 2,800.

"Perhaps a few words from me here in further explanation of what has been already stated by my Hon'ble Colleague in reference to this Railway traffic and the preference given in September to food destined to the famine-stricken district may not be amiss.

"Very early in February of last year the power of the Great Indian Peninsula and Madras Railways to deal with the increase of traffic thrown upon them arrested our attention, but both Companies then thought that nothing special was needed to facilitate their operation.

"But on the 5th March, I find myself writing, when ordering engines from our State lines in Northern India to be placed on the metals of the Madras Line, that 'the Great Indian Peninsula is now in need of engines to work its own lines,' so rapidly had grown the demands from various causes on the rolling-stock of the lines. This growth of traffic led to many suggestions all pointing to the direct interference and intervention of the State with the management of the lines and the direction of trade. On this I find L again wrote pointing out that more engine power was all that was needed, adding—

"'From the north and west the lines in correspondence are working as one system, and their capacity is only limited by their united haulage power, which no new organization or fresh administration can possibly improve; whilst on the contrary the introduction of foreign interference will inevitably tend to irritation and friction; and misunderstanding, confusion and chaos will take the place of hearty co-operation and management which at present exist between the Managers, who are mutually aware of their individual difficulties, and that these arise from physical and material causes requiring only time for their removal.

"'At this moment throughout the whole of our railway system, a number of other circumstances, and not the famine alone, has caused a sudden expansion of traffic. All railways are taxed to their utmost, and even on the far Indus Valley, where by the opening for goods traffic of a portion only of the line last January, the Flotilla on the river was released for more concentrated traffic, an unexpectedly large trade has sprung up, and the wheat of Sindh and of the Northern Panjáb is seeking a market not only in the Deccan, but even in Europe itself. All this has to be watched and nurtured, and any rough or rude remedy, dictated by the momentary necessity for removing a block on a line traversing a district of Bombay or Madras, might irreparably throw back the growth of this trade and industry.'

"Again—

"'I hope I have shewn in this note that no exceptional *administrative* measures are really needed to meet the present pressure, which I am confident can be satisfactorily overcome without them.'

"This I wrote in March of last year.

"To do more than the Railways were already doing could only be effected by two measures—one the doubling of the lines, the other the procuring of additional engines.

"The first was out of the question even if it could have been done in time to be of use in such a crisis; the second, owing to the exceptional gauge adopted in this country, was really almost as impossible as the first, since we have in Europe no reserve from other systems to fall back upon. The only alternatives left then were to contribute stock from the Northern lines, although on them, too, the pressure had fallen, and to give preference to food consigned to Southern India. Still reluctant to press, till forced by inexorable necessity, either of these courses on the Railway administration, it was not till the calamity in Southern India was assuming yet darker features, that with your approval, My Lord, I wrote confidentially to the several Railway Agents on the 27th July a letter which with the permission of the Council I will now read—

"'DEAR SIR,—The situation in Southern India appears to be graver now than ever. It is causing the Viceroy to consider with anxious solicitude the means to be adopted in order to mitigate the terrible distress which seems imminent from want of food in Mysore and Madras, and it points to our being forced to take exceptional measures for facilitating the transport of grain into and within those countries.

"'This, I fear, will have to be done at the sacrifice of certain trade interests, for in face of such a crisis, preference must be given to food-grain traffic.

"'The haulage power and the stock on the Madras, and very possibly on the Great Indian Peninsula line, will have to be increased by contributions from other lines; and Lord Lytton

feels assured that he may reckon on the co-operation of other Companies, should such a course be forced upon us.

"'I trust that it may not come to this. But I invite your aid and co-operation to help us, and in the meantime I write this to ask you to consider what you can do to regulate and increase famine traffic, so as to give it a special service and preference over all other consignments on your lines, and to see what powerful goods engines (the gradients of both the Madras and Great Indian Peninsula Railways are bad) and covered or high-sided stock you can supply to the Madras line, in order to distribute what is sent from the North or by water. The latest information shows that the Madras Railway must have 16 powerful goods engines and 400 wagons without loss of time.

"'I write this therefore to prepare you for what is probable. Please consider this in the meantime as very secret and confidential; but in case the worst comes to the worst, I should like to know beforehand what are your views on the course suggested.'

"I need not dwell upon the correspondence and negotiations that followed the issue of this Circular.

"The Agents of the Northern Railways did as much as was in their power to do, but fortunately it was not necessary to insist on preference on these lines, though the Government of Bombay were compelled at the end of July or beginning of August to urge on the representative of the Great Indian Peninsula to give food consigned to the Famine Districts preference over other goods.

"Hardly had this been done when the correspondents from the Calcutta press in Madras telegraphed to their principals in this city—'People are asking, should not the Railways now carry food only?'

"I give these facts to shew that this subject was fully considered, and that we did not lightly, nor without very great reluctance, urge on the Companies those exceptional steps—a necessity as imperative, if not more so, than the necessity of war.

"The same distinguished Statesman who has advocated Irrigation as the treatment for famine has asserted that we have abandoned this remedy in favour of Railways, the agents that support our Military policy.

"That in the alignment of these great highways the part they might play in the defence of the empire in time of war was not overlooked by the great Proconsul who first gave them to India, is incontrovertible; but if they have not yet helped to deliver us in time of war, they most certainly have in time of famine, nor have they failed to deliver us from some of the accidents of war. After the tempest of the great mutiny had calmed down,

those who were then responsible for the future peace of India, decided that a British force of a certain strength should always be in the land. The extension and part completion of the Railway system has permitted of a reduction in recent years of this force, which at the very least falls not far short of, if it does not exceed, two millions sterling a year. Thus besides having saved India some thirty millions already, it has saved to England a corresponding drain on her people.

"Nor am I, I believe, oversanguine, when I express the idea that, judging from what has been the development of traffic on the essentially Military lines of Northern India, their designers will be agreeably disappointed at finding that as Commercial lines they will not be such a drag on the finances as has been anticipated, whilst of this I am sure that they will be found to be the most powerful pacificator of our troubled frontiers.

"I have purposely avoided making any observations as to what should guide us in our administration, either civil or professional, when famine with all its suite of evils is really in the land; and I can scarcely be anticipating any final conclusion if I express the opinion that in proposing works for the exigencies of famine they must be chiefly of a character suitable for unskilled labour, requiring little skilled supervision, and able to be executed by concentrated gangs whose wages can be paid with the least opportunities for peculation. Far be it from me to say that we should have no work for the artisan or the skilled labourer. This class suffers just as much as, if not more than, the mere cooly or the simple agriculturist. But as the bulk of the labour is ignorant, the bulk of the work must be simple, and as the skilled supervision is limited (unless you divert it, and then you create mischief, from those works which must go on in any case), there exists still stronger reason that the work should be such as earthwork, collecting and breaking stone, a kind of work easy to supervise and to pay for.

"The various classes of works, suitable for relief objects taken in their order are tanks; road, river, and railway embankments; irrigation channels, canals and drainage-works; and I agree with those who think the last three are the last to be undertaken, because if these are not thoroughly well designed, they are the cause of very serious and absolute mischief. I would dwell upon this point, as I cannot too strongly reiterate the intention and, I believe, the instructions of the Supreme Government, that in view to the efficacious working of this policy it is primarily essential to have in reserve and ready the full and clear engineering details of such works, elaborated in quieter times by the professional officer in concert with the local civil authorities.

"To this precaution I attach the highest value, because I wish most distinctly and emphatically to disclaim, both on my own part and that of the Officers of the Public Works Department generally, that we regard famine as the opportunity for advancing our schemes or airing our pet projects. The initiative in these matters should be taken by the Civil Administrators, who are primarily responsible for the good government and material prosperity of the peoples committed to their charge.

"In saying this, however, I do claim for the Public Works Officers of the State that to them should very early in a campaign against famine be entrusted the agencies to fight it, and that operations be not postponed till to scarcity and lack of means are added disease and emaciation among the people, to say nothing of the demoralization inseparable from the pauper's dole, or the existence prolonged only by the relief ration.

"This is the more essential in this country, where it is not, from a total absence of food within the country itself, that men perish, but from the absence of means of acquiring it. They are deprived for the time of winning their bread by their usual callings, because we have not in this country, from its social relations and the functions Government has taken on itself, men of enterprise or philanthropy as we have in our own Western Home, who see, in the failure of a harvest, or of an industry, openings for giving to the labour thus set free, employment in works of utility, of improvement, or even of luxury.

"In advocating this as the true course to follow, I am conscious of the fact that it means a larger first outlay; but it also means a very considerable decrease in the unproductive expenditure which ordinary famine relief means.

"In what I have said I have rather reviewed the past, and dealt with what has been done already in the way of those material improvements, which may to some extent have counteracted the full effect of failure of harvests, from time to time, in parts of this Great Empire.

"I have dealt with the accomplished facts of the past, and avoided profuse promises as to the future; for I believe the narrative of the past will carry to men's minds the conviction, that those, to whom has been hitherto entrusted the guidance of affairs in this country, have not failed or neglected their duty in these respects; and this will be a sufficient earnest that this path of duty is not now likely to be abandoned."

The Motion was put and agreed to.

ADDITIONAL RATES (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill for the levy of Additional Rates on Land in the North-Western Provinces be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerell and Colvin, the Hon'ble Nawáb Faiz Alí Khán and the Hon'ble Mr. Morgan and the Mover

The Hon'ble MR. MORGAN said that, when the Hon'ble Member in charge of the Finances made his Statement with reference to the additional taxation which would be necessary, as MR. MORGAN understood him, he stated that it would be necessary to provide about one million sterling for what he called the Famine Fund, and £500,000 as what might be termed a working balance in the finances. The sum which he proposed to levy by the imposition of the taxes, Bills regarding which were now before the Council, was, MR. MORGAN understood, about £800,000. But it was not stated at the time how much was expected to be received from the tax on trades and dealings, and how much from the land-tax. At the time these Bills were brought forward, as he understood the Hon'ble Member to say, it was not intended that they should be passed so early as it was now actually proposed that they should be. But on the suggestion of His Honour the Lieutenant-Governor, the passing into law of the Licensing Bill, which was the only Bill which applied to Bengal, had been accelerated, and, as he believed, very properly so. But of course the arguments of the Lieutenant-Governor with reference to that Bill which concerned new taxation were so cogent that there was no reason for him to raise any objection to its acceleration. But it appeared to him that the same argument did not apply to the levy upon the people of an increased tax upon land in the North-Western Provinces. There, it was well understood what the existing rate was, and therefore the levy of an additional rate of two per cent., which he understood was agreed upon, would be raised without any difficulty at all. It was not a question of the supervision of Revenue-officers, inasmuch as all the data were before them. He would therefore suggest that the consideration of the Bills for the levy of an additional rate upon land might be postponed without any detriment to the raising of the rates in due course. And it appeared to him that this might be done with greater reason, inasmuch as the necessity for the raising of further money by taxation must depend to a large extent on the equilibrium which was to be established in the budget which was not at present before the Council. Of course he made this suggestion with due deference to His Lordship, but he would suggest that the consideration of these Bills should be postponed until the Council was in possession of further details with reference to the budget, and with reference also to the amount which was likely to

be raised under the Bill which had already been referred to a Select Committee, in respect to the licensing of trades and dealings in the North-Western Provinces.

The Hon'ble SIR JOHN STRACHEY said—"I do not know whether the Hon'ble Member who has just spoken has quite appreciated all that I intended to say at the beginning of the present sitting of the Council. All I am proposing at the present time is that these Bills should be referred to a Select Committee, not that the Council should take any action upon them in the way of passing them into law. I intended to say that this was all I intended to propose at the present moment, and that after the report of the Select Committee had been presented, the Bills should go in the ordinary course. I should like to say a very few words only with reference to the remarks of the Hon'ble Member regarding the possibility or propriety of postponing the consideration of the Bills affecting the proposed additional taxation upon land, while the Bill for imposing a license-tax, he thought, might be gone on with at once. But I would point out that if we do not proceed with these Bills *pari passu*, the whole basis of the scheme which I laid before the Council three weeks ago will really be disturbed, for it is an essential part of that scheme that these new taxes should be imposed equally, as far as one can do these things equally, both upon the commercial and agricultural classes. It will disturb the whole of that scheme if we legislate for the commercial classes only and leave the agricultural classes out. Also, as I pointed out, the necessity for imposing these rates in Northern India is justified on this ground, that we have already imposed this rate in Bengal, and unless we impose similar rates in other parts of India, there is really no justification for the measure already taken in Bengal; and it is desirable that we should apply the same general system, so far as one can do so equitably, in one Province as in another. I quite admit that if there were special reasons, as there are in the case of Madras and Bombay, for not imposing additional rates on land in Northern India, that would be a very good ground for acting differently. But I endeavoured to show the Council that there was certainly nothing in the condition of the agricultural classes in the North-Western Provinces to justify any exceptional treatment. I think that it is quite essential that, if our measures for taxing the commercial classes have to be gone on with, our measures for taxing the agricultural classes must be gone on with at the same time. For if the measure imposing taxation on land should not be accepted, then a reconsideration of the whole subject of the new taxation will in my opinion become imperative and we shall not have provided that insurance against famine which in the opinion of the Government it is necessary to provide.

"I will merely add now, with reference to the other remarks made by the Hon'ble Member and also to those of the hon'ble Mahárájá Jotíndrá Mohán Tagore, that I shall endeavour at some future opportunity to give as full information as may be in my power upon every point to which reference has been made."

The Motion was put and agreed to.

ADDITIONAL RATES (OUDH) BILL.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill for the levy of Additional Rates on Land in Oudh be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerell and Colvin, the Hon'ble Nawáb Faiz Alí Khán and the Hon'ble Mr. Morgan and the Mover.

The Motion was put and agreed to.

ADDITIONAL RATES (PANJÁB) BILL.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill for the levy of Additional Rates on Land in the Panjáb be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerelf and Colvin, the Hon'ble Nawáb Faiz Alí Khán and the Hon'ble Mr. Morgan and the Mover.

The Motion was put and agreed to.

ADDITIONAL RATES (CENTRAL PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY then moved that the Bill for the levy of Additional Rates on Land in the Central Provinces be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerell and Colvin, the Hon'ble Nawáb Faiz Alí Khán and the Hon'ble Mr. Morgan and the Mover.

The Motion was put and agreed to.

HUSAINÁBÁD ENDOWMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to make better provision for the management of the Husainábád endowment at Lucknow and moved that it be referred to a Select Committee consisting of the Hon'ble Sir E. C. Bayley, the Hon'ble Mr. Colvin, the Hon'ble Nawáb Faiz Alí Khán and the Mover.

He said that this Bill was necessary in order to provide for the due administration of the Husainábád endowment at Lucknow. He had, when moving for leave to introduce the Bill, related the history of that endowment. He had now only to state the manner in which the Bill would provide for the

management of the endowment and the settlement of a scheme for the payment of the pensions and the application of the surplus-income.

The Bill first provided for the appointment of trustees, from time to time, by the Local Government, upon the nomination of the pensioners and such of the descendants of the founder of the endowment as might for the time being reside at Lucknow; such trustees would be not less than three in number and not more than five, and the present Superintendent, Mumtáz-ud-Daola, would be one of them.

Sections 2 and 3 provided for the appointment of trustees in the place of deceased, retiring or incapable trustees, and for the vesting of the property of the endowment in the trustees for the time being.

The Bill then committed the management of the endowment entirely to the trustees.

Sections 5, 6 and 7 provided for the transaction of business by the trustees at their meetings; and section 8 authorized the appointment of some person, not of their own body, as paid Secretary to the trustees.

By section 11 the Local Government might call for such accounts and information respecting the endowment as it should think fit.

Section 12 empowered the Secretary of State in Council to sue in the Allahabad High Court for the settlement of a scheme for the endowment, or to compel the restitution of any property belonging to the endowment. An appeal was allowed as in cases decided by that Court in its extraordinary civil jurisdiction, and the plaint in any suit under section 12 was exempted from court-fees.

Lastly, the Bill indemnified all persons for anything done before the passing of the proposed Act, which would have been valid if the appointments of the Superintendents and Agent, after the mutiny, had been valid, and saved such persons from suits or proceedings in respect of such acts.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Gazette of India* in English, and in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

DISTRESSED SEAMEN'S EXPENSES RECOVERY BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices.

Leave was granted.

TREASURE-TROVE BILL.

The Hon'ble SIR EDWARD BAYLEY asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to Treasure-trove.

Leave was granted.

ASSIMILATION OF POWERS (NORTH-WESTERN PROVINCES AND OUDH) BILL.

The Hon'ble SIR EDWARD BAYLEY also moved for leave to introduce a Bill to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh. He said that this Bill was of a purely technical nature, and was the result of the amalgamation of the Governments of the North-Western Provinces and Oudh. In those Provinces the Lieutenant-Governor and the Chief Commissioner had formerly a different status. Certain powers which had been confided to the Lieutenant-Governor of the North-Western Provinces had in the case of the Chief Commissioner of Oudh been reserved by the Governor General in Council to himself. But as the functions of the two offices were now discharged by the same person, it was manifestly absurd to suppose that he was qualified to exercise the higher powers on the right bank of the Ganges, and disqualified to exercise them on the left bank of the same river, and in practice it was found extremely inconvenient that this distinction should continue. It was therefore proposed to assimilate the powers of the Lieutenant-Governor in Oudh to those which he possessed in the North-Western Provinces.

The Bill would be a short one and would be confined to assimilating certain enactments under which the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh now took powers, and care would be taken that, in assimilating differences which were merely technical between the

laws of Oudh and those of the North-Western Provinces, this Bill should not affect any personal rights or privileges, or any peculiar customs, which now existed in Oudh.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 23rd January 1878.

CALCUTTA;
The 16th January 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 537 L. D.—18-1-78.—240.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 23rd January 1878.

The Council adjourned to Thursday, the 31st January 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 23rd January 1878.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 31st January 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
The Hon'ble Sir J. Strachey, K.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble Sir Shamsherparkásh the Rájá of Sirmur, K.C.S.I.
The Hon'ble Mumtáz-ud-Daula Nawáb Sir Muhammad Faiz Alí Khán, Bahádur, K.C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble E. C. Morgan.

NEW MEMBER.

The Hon'ble T. H. THORNTON took his seat as an Additional Member.

TREASURE-TROVE BILL.

The Hon'ble SIR EDWARD BAYLEY presented the report of the Select Committee on the Bill to amend the law relating to Treasure-trove. He said the

report of the Committee would, he thought, explain itself. It would be observed that they had received a very large number of communications on this Bill, and its provisions had been, considering its importance, the subject of a very unusual amount of criticism. The result had been that considerable changes had been made. It would be seen that no substantial change had been made in the policy of the Bill, but the wording of it had been very considerably altered, with the effect, he hoped, of making it a practical working measure. There being no real change in the policy of the Bill or in any of its substantial provisions, the Committee did not think it necessary to recommend that it should be republished, and he therefore now presented the report, and hoped that it would be shortly taken into consideration by the Council.

ASSIMILATION OF POWERS (NORTH-WESTERN PROVINCES AND OUDH) BILL.

The Hon'ble SIR EDWARD BAYLEY also introduced the Bill to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Colvin, the Hon'ble Sir Shamsherparkásh the Rájá of Sirmur and the Mover. He had before explained to the Council that this Bill was really little more than a technical measure. It affected altogether four Acts, the Oudh Rent Act, the Oudh Land Revenue Act, the Oudh Laws Act and the Prisons' Act. The Oudh Rent Act was affected in four of its sections. By section 29 of that Act, the Chief Commissioner of Oudh was allowed to make rules for the guidance of Settlement-officers with the sanction of the Governor General in Council. As Lieutenant-Governor of the North-Western Provinces, he could make such rules without the sanction of the Governor General in Council. By section 85 of the same Act, the Chief Commissioner of Oudh was empowered to declare to which of the first three grades of Courts the Court of any Assistant Commissioner shall belong, and to invest any tahsíldár with the powers of any of the same grades of Courts, but this also only with the sanction of the Governor General in Council. By section 87, he was empowered, subject to the orders of the Governor General in Council, to invest any officer who was making or revising settlements with the powers of a Collector, or of a Deputy Collector, or of an Assistant Collector, and so on. And by section 91, whenever the state of public business required it, the Chief Commissioner might vest a Deputy Collector with the powers of a Collector for the trial and determination of suits under the Act, but this also only with the authority of the Governor General in Council.

Under the Oudh Revenue Act, similarly, by section 4, the appointment of Commissioners was to be subject to the rules which the Governor General in Council might prescribe. By sections 7 and 9 of the same Act, there were similar limitations as to the powers which the Chief Commissioner might confer on Assistant Commissioners in charge of districts, and also to certain other powers which he might confer on certain persons either by name or by official classes or by official titles; and in section 14 and following sections of chapter III of the same Act, as well as in sections 183, 212 and 222, there were a number of similar limitations to the powers of the Chief Commissioner in Oudh; and in section 43 of the same Act, to the power given to the Chief Commissioner to confirm finally certain minor settlements made from time to time of small portions of the land-revenue.

Again, under the Oudh Laws Act, section 39, the Chief Commissioner was empowered to make subsidiary rules as to the discipline and remuneration of the Village and Road Police, the disposal of unclaimed property, public health and conservancy at fairs and other public assemblies, and for imposing municipal taxes for those purposes; as to the manner of keeping records, the appointment and dismissal of ministerial officers other than those employed in the Civil Courts, and the extent of land in respect of which a proprietor or under-proprietor was to be held to be a tenant with a right of occupancy. All these powers were subject to limitations by which they could only be exercised under the orders or subject to the control of the Governor General in Council.

In all these cases similar powers were exercised by the Lieutenant-Governor of the North-Western Provinces without such limitations, and the limitations moreover had been found to create delay and inconvenience in the working of the administration.

Similarly, in the Prisons' Act, which was a general Act, not confined to the Province of Oudh, power had been taken for the Chief Commissioner himself to appoint an Inspector General of Prisons without sanction from the Government of India, and the Chief Commissioner was declared to be a Local Government within the definition of the Act.

This explanation would show to the Council the correctness of what he had said on a former occasion, namely, that the alterations to be effected by the Bill were purely technical and for the purpose of facilitating the administration, and would in no respect interfere with any peculiar custom or substantive law now in force in Oudh, but would merely give the Lieutenant-Governor in Oudh

precisely the same powers in regard to the ordinary duties of administration as he possessed in the North-Western Provinces.

The Motion was put and agreed to.

The Hon'ble SIR EDWARD BAYLEY then moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

DISTRESSED SEAMEN'S EXPENSES RECOVERY BILL.

The Hon'ble MR. STOKES presented the report of the Select Committee on the Bill to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices.

NORTHERN INDIA LICENSE BILL.

The Hon'ble SIR JOHN STRACHEY presented the report of the Select Committee on the Bill for the licensing of trades and dealings in the Panjáb, the North-Western Provinces and Oudh.

ADDITIONAL RATES (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY also presented the Report of the Select Committee on the Bill for the levy of Additional Rates on Land in the North-Western Provinces.

ADDITIONAL RATES (OUDH) BILL.

The Hon'ble SIR JOHN STRACHEY also presented the report of the Select Committee on the Bill for the levy of Additional Rates on Land in Oudh.

ADDITIONAL RATES (PANJÁB) BILL.

The Hon'ble SIR JOHN STRACHEY also presented the report of the Select Committee on the Bill for the levy of Additional Rates on Land in the Panjáb.

ADDITIONAL RATES (CENTRAL PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY then asked leave to postpone the presentation of the report of the Select Committee on the Bill for the levy of Additional Rates on Land in the Central Provinces, which the Committee had not yet been able to dispose of. As there was no motion now before the Council, it would be irregular if he were to make any remarks on the subject of these Bills.

But with His Excellency the President's permission, he might be allowed to say that he hoped, at the meeting of the Council next week, to be permitted to move that the reports of the Select Committee on these Bills be taken into consideration, and then also to move that the Bills be finally disposed of.

Leave was granted.

STAMPS BILL.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Morgan be added to the Select Committee on the Bill to consolidate and amend the law relating to Stamps and Court-fees.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 6th February 1878.

CALCUTTA;
The 31st January, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 636 L. D.—6-2-78.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 9th February, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
The Hon'ble Sir J. Strachey, K.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble Sir Shamsherparkásh the Rájá of Sirmur, K.C.S.I.
The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble G. H. P. Evans.
The Hon'ble G. C. Paul.
The Hon'ble E. C. Morgan.

NORTHERN INDIA LICENSE BILL.

The Hon'ble SIR JOHN STRACHEY moved that the Report of the Select Committee on the Bill for the licensing of trades and dealings in the Panjáb, the North-Western Provinces and Oudh be taken into consideration. He said:—

"MY LORD,—In asking the Council to take this report into consideration with the object of passing the Bill into law, I shall have little to say regarding the measure itself. The reasons for which new taxation is required, and the principles on which the actual proposals of the Government are based, have been so fully explained already, that it is quite unnecessary that I should enter into them

again. That further taxation is unavoidable to enable the Government to meet, as one of the ordinary charges of the State, the obligation of preserving the lives of the people in time of famine is admitted, I think I may say, by all reasonable men. The form which this fresh taxation should take is on the other hand a subject on which it is inevitable that differences of opinion should exist. I have stated on behalf of the Government the reasons which have led us to the conclusion that the trading and agricultural classes are those on which the obligation of contributing for the prevention and relief of famine more especially rests. These are the classes on which as a whole, and on which almost alone, the pressure of actual famine falls. They ought, therefore, to contribute for their own protection. In regard to the commercial and trading classes, there is also this strongest of all justifications for taxing them, that, excepting always that comparatively very small section of them which is composed of Europeans, they now pay almost nothing towards the expenses of the State. There is, moreover, this further reason, that although the trading and agricultural classes are the first to suffer when famine occurs within the limits of their own Provinces, they benefit immensely, taking them as a whole, by the occurrence of famine in other parts of the Empire. The misfortune of their neighbours brings to them wealth and prosperity.

"On the other hand, the professional classes and those who depend on fixed incomes for their support, although they suffer from the high prices caused by famine, are seldom the recipients of actual relief from the State; under no circumstances do they derive any advantage from famine when it occurs, and they have no power of passing on to others the burdens placed on themselves. The small officials and servants receiving wages are in this country very numerous, and there is certainly no class on which it would be less equitable to impose taxation for such a purpose as this..

"I quite sympathise with the feeling which makes so many people regret and protest against the apparent injustice of exempting from further taxation the happy possessors of large incomes derived from professional or official or other sources. But I will not enter into this question. Its real meaning is in my opinion simply this. Would not an income-tax upon all classes of persons and property have been better than the measures which have been actually proposed by the Government? I leave it to others to answer the question. For my own part, I have already said that I was always a supporter of the income-tax while it lasted, but I do not think that its re-imposition at the present time would be politic or just. Under such circumstances, moreover, as the present, Government has to consider what is practicable, and although I do not mean to say that it was really impracticable

to restore the income-tax, I freely confess that I should have been sorry to have had to propose it until the public was convinced that no other means existed of obtaining the additional revenue which was required. I said before, and I now repeat, that, in my opinion, we have to choose between measures such as those which are now before the Council and an income-tax. There is no other alternative that I, at least, can see.

"The objections to a license-tax, like that described in the present Bill, are obvious. The tax necessarily falls comparatively lightly on those who can best afford to pay it. Here, again, I say, if you refuse this condition, you can only remove it by subjecting the commercial classes to an income-tax. The objection that we were proposing to tax the rich too little has been to a certain extent removed by the change which the Select Committee has made in the Bill, and which I hope the Council will accept, by which the maximum fee chargeable will be five hundred instead of two hundred rupees. The change will give us very little more money, and it involves no principle; for whatever sum may be fixed as the maximum fee, must be fixed in a purely arbitrary manner. If, however, raising the amount to Rs. 500 makes the tax seem more equitable, this is itself an advantage. As to the objection which has been raised in some quarters, that this tax will fall mainly on the poor, I content myself with simply denying the fact. It will touch no person whose nett earnings are less than Rs. 100 a year; and if anybody asserts that in the Provinces to which this Bill refers, any man is poor who possesses an income of Rs. 100 a year, he is ignorant of the facts. Such a man is not poor; he is a man far removed above poverty, and well able to pay his contribution towards insuring the country against famine. To say that our new taxation will fall upon the poor is either an error or a calumny.

"As I shall show again presently, exactly the same thing is true regarding the additional rates which we propose to levy on the land. My old friend, Sir George Campbell, told the British public the other day, that his soul was 'filled with anguish' when he thought of the iniquity that we were committing in imposing taxes on the poorest classes for the benefit and at the instigation of the rich. Now, I am not going to make a counter-attack upon Sir George Campbell. If I could ever be inclined to do so, it would not be in this Council-room in Calcutta, in the great Province which owes to him, in my judgment, a lasting debt of gratitude for the admirable, but often far from pleasant, work which he performed as its Governor. But Sir George Campbell, with all his great qualities, has never been distinguished by his reticence.

"I remember on one occasion telling him myself, when he had issued a certain wonderful circular, that if his Secretary had done his duty, the manu-

script, instead of being sent off straight to the press, would have been accidentally mislaid for a fortnight. It is a pity that Sir George Campbell's letter to the *Times* did not suffer a similar fate: he might then have learnt that he had been knocking down the creations of his own fancy, and he might have written, as I hope his sense of justice will make him do now, an eloquent tribute of admiration to our measures.

"We are doing none of those things with which Sir George Campbell has charged us. By the Bills now before the Council, we are imposing no fresh taxation whatever on the poor; and as to the Salt-tax, in regard to which our imaginary proceedings have made Sir George Campbell so especially unhappy, I will say now, what I have said before, that we have taken the greatest steps ever yet taken in India for reducing the pressure of this tax upon the poor, and giving to the mass of the people the largest possible supply of salt at the cheapest possible rate. In Northern and Central India, not only are we imposing no fresh burdens on the poorest classes, but we have already benefited these classes by the removal of taxation on salt to the extent of £200,000.

"There is another fact bearing on the License Bill to which I must call attention. It is, as I have said, proposed that no person shall be liable to the tax whose annual earnings are less than Rs. 100. This does not appear on the face of the Bill, and the reason for this is that as the measure will extend to several Provinces and will have to be applied under conditions which vary considerably in different districts, it is not certain that the same minimum limit of taxable income will everywhere be appropriate. For independently of other considerations, the purchasing power of money varies greatly. Under the existing license-tax in the North-Western Provinces, no one is taxed whose presumed income is less than Rs. 200, and it may be found desirable to make no change in this respect. We desire to leave a wide discretion to the Local Governments, which are in the best position for forming sound opinions on such a subject. While, however, the Government of India allows this discretion to be exercised for the relief of the tax-payers, it gives no such authority to extend the incidence of the tax downwards. Under no circumstances will the tax touch any one whose annual earnings are less than Rs. 100. Nor is this all. It will be observed that the lowest fee payable under the Bill is one rupee. The Bill declares that any person may claim to have the fee charged against him reduced or remitted altogether, if he can show that it falls at a higher rate than two per cent. on his annual earnings. Applying this rate of two per cent. to an income of Rs. 100, the minimum fee would be two rupees and not one rupee. The meaning of this is that the Government desires to leave to

the local authorities entrusted with the administration of the tax a discretion to reduce the demand when they are of opinion that it would fall heavily. Thus it will often happen in practice that the poorest class affected by the measure will pay at the rate of one per cent. only instead of two per cent., the rate charged on the higher incomes.

"I need not say anything further about the License Bill. I think it will be convenient if I ask Your Excellency and the Council to allow me to pass now to the other taxation Bills under which additional rates will be imposed on the land in Northern India. Those Bills are so closely connected with the Bill actually before us that they can hardly be considered separately, and I hope that the Council will agree with me in thinking it desirable that the discussion of the whole of our measures should take place while the present Bill is before us. My reason for saying this is that it is, as I have already fully explained, an essential part of the policy of the Government that this new taxation should fall both on the commercial and agricultural classes, and that so far as may be practicable each class shall bear an approximately equal burden. This principle has already been to a great extent carried out already. Additional rates similar in character to those which we are now proposing to levy in Northern India have already been imposed in Bengal, and the Bill taxing the commercial classes of that Province will, I presume, soon become law. We desire to apply the same principle to the other Provinces, the only exception being that, for reasons which have been stated at length to the Council, it is not thought proper to impose at the present time fresh taxation on the agricultural classes in Madras and Bombay.

"When these Bills were introduced I said that the justice of imposing new burdens on the agricultural classes would be more questioned than that of imposing them on the traders, and referred prominently to the objections which had been and would continue to be urged against fresh taxation of this kind, on the ground that it infringed, or would be thought to infringe, the conditions of the settlement of the land-revenue. I declined, and must still decline, to discuss the question of the right of the State to impose such taxes, for as I have already said it is impossible that any Indian question could be named which has been more completely argued out during a long course of years than this, and no question could be named which has been more distinctly closed by positive decisions of Her Majesty's Government. I have now a right to assume (I am now quoting the words of the Secretary of State) that—

"'the levying of such rates upon the holders of land, irrespective of the amount of their land-assessment, involves no breach of faith upon the part of the Government, whether as regards holders of permanent or temporary tenures.'

"I feel that I may also, without impropriety, decline to discuss the question whether, apart from the right to impose such taxes, the condition of the classes on whom in Northern India the actual burden will fall is such that they can pay without hardship the amount which it is now proposed to levy. That amount is one per cent. on the rental of the land. I do not, I hope, undervalue the opinions of those officers, some of them men who are entitled to be listened to with high respect, who think it inexpedient to impose any fresh taxation on the land. But this I assert that it is impossible for any one who knows anything of the real condition of the proprietors of land in any part of Northern India, to say that these rates will be more than an insignificant burden. It must be remembered that they, in common with the existing local rates to which they will be an addition, will be payable by the landlord, and will not fall on the poorer classes interested in the land. I do not deny that it will very frequently happen that the landlord will do every thing in his power and will often succeed in making his tenants pay the amount charged against him. But the same would be true of every other tax which could be imposed upon him, and this objection has no special force in the present instance. Neither can it be disputed that within the limits authorised by law, and justified by custom, rents will in the long run inevitably be raised by landlords, whether they are taxed or not, as they think consistent with their own interests, so long as the tenants will pay them. Tenants, however, are rapidly learning to protect their own rights, and it is not so easy as it once was to impose upon them demands unauthorised by law.

"Before leaving this part of the subject, I may add that the Government of India has no intention of actually levying these additional rates in the North-Western Provinces until the country has completely recovered from the serious loss which it suffered from the almost total failure of the last summer crops. The Lieutenant-Governor has been informed that no additional demand will be made until the next agricultural year. The Government of the Panjáb has decided that no similar reasons exist for deferring the collection of the new rate in that Province.

"There is one objection to the imposition of new rates on the land which I fully admit is a real one. It is an objection which it has always been clear we should have to meet, and it received the careful consideration of the Government before these measures were proposed. I cannot state that objection more clearly than by quoting the following passage from the letter from the Government of the Panjáb which has been laid before the Council:—

"'The Lieutenant-Governor would duly record, with reference to the Bill for enhancement of the local cess, that he believes that, although it will give rise to no active discontent or

expression of dissatisfaction, it will still be regarded by the people with some dissatisfaction, as involving a further departure than that taken in the original Local Cess Act, from the principle of the fixity of the land-revenue demand. This feeling of dissatisfaction will not be the less strong from the fact that the money raised under the new Act will possibly be spent out of the Panjáb. To a trained intelligence it is easy to distinguish the proposed impost, which is no more than a tax upon rent, from an enhancement of the Government share of the produce of the land. But His Honour doubts whether it is possible to persuade uneducated zamíndárs, the more especially that the revenue is no longer taken in kind, but in cash, that the demand is not an increase on the amount of land-revenue which has in each district been fixed for the term of settlement. The Lieutenant-Governor does not however imagine that there will be any difficulty in collecting the enhanced tax, or that after a short time, the irritation caused will not pass away.'

"Although we have not received from the other Provinces objections similar to these which have come to us from the Panjáb, there cannot be the least doubt that they will be felt as much in one Province as in another. They were urged in 1871 in the North-Western Provinces, when new local rates were imposed in the permanently-settled districts; they were urged at the same time in Oudh; they were urged in the Panjáb; they will everywhere be urged now, and they will be urged again hereafter, if it should ever become necessary to place additional taxation on the proprietors of the land. Exactly the same objection was raised to the imposition of the income-tax on profits derived from land. The Government has, for years past, done its best to make people understand the essential difference between the land-revenue and taxes of this kind; and in 1871, when the laws were passed under which the local rates in Northern India are imposed, the Legislature enacted, in the plainest possible language, that these rates 'shall be paid by the landlord independently of, and in addition to, any land-revenue assessed on the estate.'

"In spite, however, of all that has been done, the old ignorance continues. Nor can we expect that it will soon disappear among the people, when we find that economical heresies, such as those to which I have alluded, still form part of the faith of many of our own officers. Objections to taxation of this sort, based on opinions which have their sole origin in the ignorance of the people, cannot be answered, although this does not make them less real. Among all the difficulties and dangers with which we have to contend in India, those to which we are exposed by the ignorance of the people are incomparably the most serious. It is, unhappily, true that our most enlightened and useful measures are, as a general rule, precisely those which are the least popular. If any man supposes that we earn the present gratitude of the people of India by abolishing satí and infanticide, by female education, by constructing railways and canals, by making the towns and country healthy, or even by improving the laws, which add to

the security of life and property, that man is greatly mistaken; but this is no reason why we are not to persevere with our work. So I say of these Bills. I do not pretend that the people who have to pay these taxes will like them; but it is, in the opinion of the Government, necessary that they should be imposed, and we trust the Local Governments when they tell us that, while they can suggest no better form of taxation, they are satisfied that the measures now proposed will lead to no serious dissatisfaction which it might be politically unwise to face, and that such dissatisfaction as may arise will soon pass away, as it has passed away in similar cases before.

"In concluding the remarks that I desire to make on the Bills now before the Council, I will only add that the Government of India is fortunately enabled to say that its policy is cordially approved by all the Local Governments which these Bills will affect, not only with regard to the proposals that specially affect the land, but to all the measures by which we hope to provide the necessary insurance against famine; and further, that these Governments confidently look forward to the successful application of these measures in their respective Provinces. I do not doubt that these assurances will be as satisfactory to the public as they have been to the Government of India.

"A desire has been expressed that I would explain more fully than has hitherto been done the manner in which the Government proposes to apply the proceeds of these new taxes. I shall, I feel certain, be very readily able to do this to the satisfaction of the Council, for nothing can be clearer than the principles on which the Government proposes to act.

"I can hardly do better, in the first place, than ask the Council to look at the brief official Statement of Objects and Reasons, which was published with the new Taxation Bills when they were first introduced. That Statement explained, in a few words, the reasons for these measures. It was said that the necessity was imposed upon the Government of India of bringing the public revenues and expenditure into a state of proper equilibrium; that famines could no longer be treated as exceptional calamities, and that the obligations entailed by them must be provided for among the ordinary charges of the State. The periodical occurrence of famine must, therefore, enter into the calculation of the Government in making provision for its ordinary yearly wants, and such a surplus of ordinary income over expenditure must be provided in each year of prosperity, as would make a sensible impression on the debt which it might be necessary to incur in times of famine. To enable the Government, it was said, to meet these obligations, additional taxation was necessary.

"The object, which I thus stated, is a perfectly simple one. These new taxes are required for the sole purpose of giving us, year by year, a sufficient surplus of income over expenditure to meet these famine charges, which had not hitherto been taken into consideration in our yearly accounts. It seems to have been supposed by some that the primary object of the Government of India was to give to the Local Governments the proceeds of these new taxes, and to transfer to them, in some mysterious manner, certain indefinite obligations in relation to the future charge arising from famine. There could be no greater mistake, and I am sure that I have never said anything to justify it. These great calamities can only be met by aid of the resources of the Government of India, and it is these resources that must be strengthened to meet the obligations they impose. Although then, as I shall presently explain, we shall use the Local Governments as our agents in levying these taxes, their proceeds will mainly go into the Imperial Treasury. With their help, we hope to secure that surplus revenue, which will enable us in the future to discharge the heavy obligations which the periodical occurrence of famine entails upon the country, without being driven into the fatal course of constantly increasing the public debt, and the burden it involves.

"As I previously explained, we start with the hypothesis, that in every ten years the Government of India will have to spend £15,000,000 on the relief of famine. The case will be put into its simplest form, if we assume that the whole of the £15,000,000 will have to be spent at once at the end of this period, and the arguments I am about to use will not be in any way invalidated by this assumption, though it be not strictly true. Now, as the very foundation of our policy is the resolution not to permit this expenditure to create a constantly increasing charge for interest, the expedient of simply borrowing when the occasion occurs, and thus increasing the annual charges on account of debt, say, by £600,000 in each period of ten years, must, of course, be set aside; and it follows that we can only obtain the £15,000,000 which we require by saving up an equivalent sum in years of prosperity. If we provide for this purpose a *bonâ fide* surplus of £1,500,000 a year for ten years, we shall have obtained our £15,000,000.

"As we cannot keep our annual savings locked up in a separate box, it is inevitable that when the actual necessity for spending the £15,000,000 arrives, we shall have to borrow the money, so that what we have practically to do is this—we must reduce our debt by £1,500,000 year by year during the whole period, or by £15,000,000 in the ten years, thereby reducing the yearly charge for interest at the end of that time by £600,000. Then, when the necessity for spending the £15,000,000 arrives, we can borrow that amount and incur a

fresh charge for interest of £600,000 a year, and be no worse off than we were ten years before. This process, by which in periods of prosperity the charge for interest on debt is gradually reduced, thus constantly restoring the exhausted power of borrowing without increased taxation, is what the Government virtually proposes to adopt.

"In India, however, the policy has been deliberately and wisely accepted of borrowing every year large sums of money for the construction of the railways and canals which it is absolutely necessary that the country should possess if its material advancement is not to be arrested. Even if the financial consequences of this policy had been less satisfactory than they have been, it might still have been our duty to persevere in it, though it should have called for increased sacrifices from the country in the form of taxation. But experience has shown beyond the shadow of a doubt that, looking at the matter even from a purely financial point of view, we could have done nothing wiser and more profitable than go on investing capital in these undertakings; and that so long as these investments are prudently limited, as they have been up to the present time, so that the growing income derived from the works keeps pace with the charge for interest on the borrowed funds, they may be continued with complete financial safety.

"It was on considerations such as these that Lord Lawrence in 1869, in his Minute on Railway extension, assuming that the revenues could, without objection, bear a yearly charge of about thirteen millions, to meet the interest on Capital-outlay on productive works in course of construction, &c., during the period in which their income is becoming developed, based his proposals for the gradual, but systematic, prosecution of this class of works, and that the Government of India has been since acting with most satisfactory results. The forecasts relating to the extraordinary expenditure on Railways and Irrigation Works that have from time to time been prepared in the Public Works Department have supplied sufficient evidence of the prudence with which this part of our financial policy has been conducted, and it is only necessary to follow the same principles in the future to ensure equally sound results.

"The truth of these remarks can readily be established. In the first place, the nett charge for the interest on the Guaranteed Railway Capital, which was upwards of eighteen millions sterling in 1870-71, was reduced by the growth of the income to less than £300,000 in 1876-77, while in the present financial year, partly no doubt from the increased famine-traffic, the interest will be more than covered. And though next year quite so good a result cannot be anticipated, it is certain that in these six years a nett improvement of more than 1¼ millions has

been secured for the public revenues by reason of these works. During the same period the total expenditure on State Railways has reached a sum involving a gross charge for interest now amounting to £700,000, against which we already have a nett income of £300,000 yearly, leaving a nett charge of £400,000. The Irrigation Works carried out in the same years have led to an increase of interest-charge of £400,000, set-off by an increased nett income of £200,000, leaving a nett charge of £200,000. On the whole, setting-off the increased charge of £600,000 against the improved income of 1¼ million, the general result is an improved financial position of £600,000 a year, notwithstanding the large investments made in the new works, a considerable part of which is necessarily not yet productive, though it is rapidly becoming so.

"The same general result is plainly indicated otherwise by the fact that the total charge for Interest on Debt of all sorts and Guaranteed Railway Capital is in the present year less than the charge in 1870-71 by about two millions, to which sum should be added the nett increase of income due to Public Works, amounting, say, to £500,000, to show the improvement in the general financial position, which, if not directly due to the prosecution of these works, has, at all events, been consistent with a continued average expenditure upon them of hardly less than four millions a year. It must also be remembered that these results have been secured during a period in which very exceptional seasons of scarcity have occurred, involving charges of some sixteen millions sterling.

"We assume, therefore, that the Government will continue to borrow money on these principles for such productive works.

"Now, it would be obviously absurd to pay off every year debt to the amount of £1,500,000, and simultaneously to incur fresh debt to the same extent. What, therefore, we have to do, in the actual circumstances of the case is, by applying to the construction of these works the proceeds of the new taxes, to reduce by £1,500,000 a year the sum which we might otherwise have borrowed. The ultimate financial result of this, as will readily be seen, will be practically the same as that which would have followed if we had devoted every year £1,500,000 to the actual repayment of debt. For returning to our former hypothesis, we shall, at the end of our ten years, thus have prevented borrowing to the extent of £15,000,000, and our annual charge for interest will then be less by £600,000 a year than it would otherwise have been. We could, therefore, if occasion required, borrow £15,000,000 for the relief of famine, and be in no worse a financial position than we were at the beginning of the period of ten years.

"The soundness of this argument depends of course on the assumption that the works which are constructed from our annual contribution of £1,500,000 from the public revenues will be really reproductive, that is, that they will at the end of the ten years produce an income at least equal to the interest which we should have to pay if we had then to replace by borrowing a sum equal to that furnished from the new taxes for their construction. This assumption, however, has no special or peculiar significance in connection with these new arrangements; it is (as I have just explained) the justification of our whole policy of borrowing money for works of public improvement. Whether we construct our railways and canals with borrowed capital, or pay for them out of this famine insurance fund, we equally assume that they will eventually give us a return of more than the ordinary charge for interest on the outlay; and to repeat what I have said before, experience has now been sufficiently prolonged to show conclusively that, notwithstanding all the mistakes that have been made, the gradual growth of the income of the productive public works has been sufficient to protect the Imperial Treasury against any increase to the actual charge for interest on debt. This explanation will show the Council how, either by the direct discharge of debt, or by the investment of money in productive works, if the circumstances of the time should render that course most suitable, charges on the revenue may be extinguished, or new income created, which shall enable the Government to borrow in the future to the full extent to which the proceeds of the new taxes are applied, and that a true famine insurance fund will thus have been created.

"I have hitherto spoken as if the subject concerned the Imperial Government alone; and I have made no reference to the part in the arrangements which will devolve upon the Local Governments. Vitally important as this part will, in my opinion, be, I might indeed almost pass it by on the present occasion, because it is not the subject now before this Council. We are really merely asking this Council to authorise the imposition of new taxes for the purpose of improving the financial position of the Government of India to such an extent that it will be able to undertake, with its ordinary revenues, by help of the arrangements that I have described, the duty of preserving the lives of the people in time of famine. At the same time the Government is most ready to give every explanation in its power to the Council on all parts of its policy, and I will as briefly as possible state the manner in which the action of the Local Governments may be expected to conduce to the great end we have in view.

"I have, on former occasions, stated to the Council, with a persistency which I am afraid has sometimes wearied them, that the keystone of the whole finan-

cial policy of the present Government is the enforcement to the utmost of the responsibility of every great Province of the Empire for meeting its own local wants. We have given to the Local Governments largely increased powers; we declare that they alone are competent to deal wisely with the details of administration; that they have advantages which we cannot possess of seeing what their own Provinces require; and that it is only by acting on these principles that we can obtain either good provincial administration, or exercise that intelligent power of control on the part of the Imperial Government which we look upon as essential to the prosperity of the Empire. It is childish to suppose that the Government of India increases its strength by meddling with details about which it knows nothing.

"A great deal has been done, and a great deal remains to be done, in carrying these principles into effect; and the most serious duty now before us is their application to the great problem of preserving the country against famine. I do not now pretend to say how this application of these principles is in detail to be carried out. The whole subject of the measures to be taken for the prevention and relief of famine is so vast that it would be mere foolishness if I were now to attempt to enter upon it. It is, as the Council and the public are aware, about to be referred to a special commission of enquiry, and certainly no greater question had ever to be studied than that on which they will have to deliberate and advise.

"If, therefore, I now am asked to describe how this money, which the Government of India proposes to devote to the relief and prevention of famine, is to be spent, I can give no exact reply. I cannot tell the Council what railways and canals will be constructed; still less can I tell them what systems of relief will be acted upon when millions of starving people have to be fed, or what changes of administration will be necessary to enable the measures of prevention and relief to be carried out under the best possible conditions. All that I can say with certainty is this, that if the great works for increasing the productiveness, and for improving the communications, of the country are to be wisely chosen, and wisely and economically executed, and if the income which they yield is to receive its best development; if again, when famine actually occurs, sound principles of relief are to be applied with real efficiency and wisdom, it will be through the agency of the Local Governments and the local authorities that these results will be obtained; and not by the action of the Central Government. Among all the responsibilities which we desire to impose on the Local Governments, the greatest of all will be that of protecting the people of their own Provinces against famine. The working out in detail of the arrangements by which we hope that this object may eventually be accom-

plished will be a work of time. We do not disguise from ourselves the fact that many of the efforts which may be made before prolonged experience has been gained may, hereafter, be found to have been erroneous; but this is no reason why we should now hesitate to take the first steps, which seem to us at the present time to be required. We can do little more now than declare the principles which we intend to follow. I have already explained those principles. While we say that every Province must be primarily responsible for supplying the wants which arise within its own limits, we have not been able to devise any plan by which the actual expenditure for the relief of widespread famine could be charged directly to the Local Governments. When a famine occurs, local resources are necessarily for the time swamped and overwhelmed, and the whole resources of the Empire must be employed for the relief of the afflicted territory. On the other hand, to enable the Imperial Treasury to bear such great occasional burdens, all the Provinces must, year by year, contribute what I have called mutual assurance payments, which payments go to form the surplus to be stored up for use in time of need; not, of course, to be stored up idly in the treasury, for that would be a reckless, purposeless waste, but stored up in the shape of unemployed borrowing power, which would otherwise have been consumed. Thus, as I have said before, resources will be created upon which the central authority will draw whenever it is found necessary to discharge the obligations arising from what I have called the dead-weight of famine-expenditure.

"To maintain the principle of provincial responsibility, and to give to the Local Governments a substantial interest in the efficient and economical levying of the new taxes, these taxes will be imposed provincially, and we desire, so far as possible, to distribute the funds which will become available for the construction of railways and canals among the Local Governments with some regard to the amount of the local contributions. Although, as I have already explained, it is necessary that the special resources now created shall be at the complete command of the Government of India, we shall leave to the Local Governments, to be spent by them, a margin from the new taxes, just as we have left them a margin of the revenues from excise and stamps, which have lately been made provincial. The imposition, provincially, of the new taxes will bring home the sense of provincial obligation more fully than would have been the case if the taxes had been treated as imperial; and the propriety will be more readily acknowledged of leaving the Local Governments to construct and maintain and profit by the works to which these new taxes will contribute.

"There is an additional advantage which we hope will result from these new measures. To whatever extent we can supply funds from the produce of the

new taxes, we shall be less dependent than heretofore on borrowed money for the means of constructing our reproductive works; and we may hence reasonably hope to be able in future to provide funds for these purposes with more regularity and certainty than has hitherto been possible.

"I see in another direction also promise of further relief to the Central Government, and of great benefit to the Provincial Governments, in respect to the debt to be hereafter incurred for works of local utility. Both in Bengal and in the North-Western Provinces steps, which have been attended with marked success, have already been taken for obtaining subscriptions to loans in the localities interested in works of this character. I hope that it may be found possible to develop and systematise such a means of providing the capital that may properly be borrowed for works of improvement; and that local contributions may be successfully sought under conditions which will interest the classes directly benefited by such works, not only in the provision of the funds required for their construction, but in the proper management of the works when they are completed, and in the development of the revenue which they produce.

"The arrangements which we are now making will be in complete harmony with those which were initiated in March last. The Imperial Treasury will be protected, if not wholly, at least to a very great extent, from past and future charges on account of interest on the capital invested in railways and canals. The provincial revenues will have to supply to the Imperial Treasury, or to hold at its disposal year by year, a sum equal to the interest on the capital expended on all the reproductive works, constructed either with borrowed money or funds supplied from the new taxes; and assuming that the works are judiciously designed, executed and managed, this sum will be provided by the income which they produce. The surplus income yielded by the works will go to increase the provincial revenues. These arrangements will give the best possible security for the judicious selection of the works, their economical construction and management, and for proper attention being paid to the development of the income they should produce. Their failure will entail burdens which the provincial revenues will be required to meet; their success will add to those revenues and to the resources at the command of the Local Governments in the most advantageous manner possible for the country, without more taxation and through the instrumentality of works which constantly add to the wealth of the community at large.

"I think, My Lord, that I have now made it sufficiently clear how we propose to apply the £1,500,000 which we hope to provide as an insurance against

famine. We shall apply it virtually to the reduction of debt; and when the calamity of famine actually arrives, we hope, not only to be able to meet it without throwing fresh burdens upon the country, but to find that our means of giving efficient relief have been immensely increased by the useful works which we have carried out in the preceding years of prosperity.

The Hon'ble MR. THORNTON said: "My Lord,—Having been employed for some twenty years in the Panjáb, and had opportunities, in the course of my service, of becoming more or less acquainted with every district of that Province, I desire to trouble the Council with a few remarks upon the Bills now under consideration, chiefly by way of supplement to the statements contained in the speech of the Hon'ble Mover.

"With regard to the License Bill, I have little to say, except that there has been, on the part of the district officers of the Panjáb, a chorus of consent that, if additional taxation is necessary to provide insurance against famine, no classes can be more justly called on to contribute than the trader and the artizan, for none have benefited more from British Rule, and none have paid so little for the advantages they enjoy. The form of the tax has been generally approved, and if, as we are assured by the Hon'ble Mover will be the case, though it does not so appear on the face of the Bill, the tax is not to affect persons with incomes of less than Rs. 100 per annum, it certainly cannot be regarded as a tax upon the very poor.

"But it is to the Bill for the levy of additional rates on land in the Panjáb that the greatest objection has been raised. It has been urged on the one hand that the land cannot bear the additional burden it is sought to throw upon it; and on the other, that it will be regarded as a mere addition to the land-revenue-demand and in breach of the engagements made at settlement. Now, in regard to the first point, personal observation enables me confidently to endorse the opinion of the Hon'ble Mover, that the land-owners of the Panjáb can well afford the proposed insignificant addition to the local rates; for, in common with most observers, I am satisfied that, owing partly to the moderation of the land-revenue-assessments, partly to the security of title derived from the record-of-rights, partly to the room for extended cultivation, partly to improved communications and other results of British administration, the agriculturist of the Panjáb is, as a rule, eminently prosperous and thriving. But individual opinions upon a point like this are less valuable and less convincing than a few plain facts, and I trust, therefore, it will not be deemed out of place if I take up the time of the Council in citing a few facts in support of my assertions.

"I will begin, then, by endeavouring to give some proof of my assertion regarding the moderation of the land-revenue-assessment in the Panjáb. For this purpose I cannot do better than call the attention of the Council to page 9 of the General Summary prefixed to the Panjáb Administration Report for 1875-76, where will be found a concise history of the land-revenue assessments of the Province from before its annexation to the present time. The substance of the information there given is as follows:

"Under the Sikh Government the principle of land-revenue-administration was a very simple one. The State, as proprietor-in-chief, took from the land all that it could get; in other words, it absorbed and appropriated the entire rental. It handed over whole tracts of country to the mercy of farmers of the revenue, and the farmer of the revenue often took as much as one-half the gross produce of the land, besides a multitude of cesses under the names of *rasúm*, *nazráná*, and the like, and exorbitant *fines* on succession. After the first Sikh war the Panjáb came, not under the dominion, but under the paramount influence, of the British Government, and one of the first points to which the attention of the British advisers of the Sikh Darbár was turned was the oppressive character of the land-revenue administration. Accordingly, the State-demand was reduced and settlements made of the land-revenue, for terms of years, on the basis of the State taking, not *half*, as previously, but *one-third*, of the gross produce. This arrangement was at the time hailed with delight by the agricultural population as a very liberal concession. Then came the second Sikh war, followed by the annexation of the Panjáb; and very shortly after annexation, measures were taken to introduce what are termed regular settlements into the Panjáb; these are, as most of the Council are aware, settlements of land-revenue for terms of years, made after careful survey and enquiry into assets. Well, when these regular settlements were first introduced in the Panjáb, the system then in force in the North-Western Provinces was adopted, under which the State's land-revenue-demand was limited to two-thirds of the nett assets or landlord's rental, amounting to about one-fourth of the average gross produce; that is to say, the British Government commenced its revenue-system by claiming as its share of the rental just half the amount that had been taken by the Sikhs. Since that time a further concession has been made, and the State's demand has been further limited to *half* the nett assets or rental, and all more recent settlements have been and are being made upon iths principle. And it must further be observed that, though the assessments are levied upon the principle of the State, as chief proprietor, taking half the rental, in practice the amount taken is considerably less than half the rental. Measured in kind the State's demand may be said never to exceed one-

sixth of the gross produce; it is frequently not more than one-eighth, one-tenth or one-twelfth; and in some tracts where the rainfall is scanty, it is not more than one-fifteenth of the average gross produce, the value of which is calculated at its average price for a period of from twenty to thirty years. Let us now see what effect this liberal policy, working in combination with the other causes I have adverted to previously, has had upon the position and prospects of the agriculturists in the Panjáb. One result is that there is a striking difference in the amount of land-revenue-demand in British territory on the one hand, and in the territory of adjoining Native States on the other; a circumstance greatly conducive to a feeling of contentment in the British subject. Another result is that the land-revenue, even after new assessments involving considerable increment of demand, is collected with the greatest ease; another effect may be seen in the improved clothing and manner of life of the agricultural population; but perhaps the increasing wealth of the peasantry will be better gauged by the following facts taken from the returns appended to the Administration Reports. In the year 1868-69, the first year for which the statistics of area and cultivation prescribed by the Government of India were prepared, the cultivated area of the Panjáb Province (exclusive of course of Native States) was in round numbers 20,100,000 acres, and the land-revenue-demand 217 lákhs of rupees. This demand fell at an average rate per cultivated acre of one rupee, one anna and three pie, a rate of incidence which experts will admit to be very moderate in comparison with the rate of incidence in other parts of British India, and still more so in comparison with rates prevailing in adjacent Native States.

"In 1872-73 (five years later) the cultivated area had increased from 20,100,000 acres to 22,600,000 acres, and the revenue-demand, though it had been intermediately increased in the ordinary course of settlement, fell at the average rate of only fifteen annas and seven pie per cultivated acre. In other words, extension of cultivation had reduced the revenue-demand per acre by ten per cent. I regret my inability to produce statistics of more recent date, but the reason is that, with a view to save labour and inconvenience to the people, the statistics from which I have quoted are prepared, not annually, but quinquennially. But I have little doubt that the next quinquennial return will show a similar if not a greater extension of cultivation, and I am informed that the Spring crop, now in the ground in the Panjáb, is by far the most extensive ever known.

"Concurrently with this expansion of cultivation and the steady reduction in the originally moderate rate of incidence of land-revenue, there has been a most remarkable increase in the selling price of land. At the time of annexation, such was the crushing character of Sikh taxation, that ordinary agricultural

land had scarcely any market-value at all. In the year 1859, when I had the honour to hold the post of Secretary to the Financial Commissioner of the Panjáb, the average selling price of revenue-paying land was, I recollect, a little less than four years' purchase of the assessment; in 1868-69, ten years later, the average selling price of land was *eighteen* years' purchase of the assessment; in 1873-74, or five years later, it was *twenty-eight* years, and by the last return, that for 1875-76, it was *thirty* years' purchase of the assessment.

"Now, as the agricultural interest of the Panjáb is not made up of a limited number of large landed proprietors and a mass of tenantry, but is composed chiefly of a multitude of small land-owners, this enormous rise in the value of land does not mean, as it would mean in the case of England or Bengal, that a few individuals have become millionaires, but that the mass of the agricultural population are, so far as the value of their land is concerned, more than six times as well off as they were twenty years ago.

"With these facts before us, it is impossible to believe that the slight increase now proposed to the local rates will cause any serious inconvenience; for what does the Government ask? Why, it asks a body of land-owners, whose property has more than sextupled in value, to pay a famine-insurance-rate for that property amounting on an average to one farthing per acre per annum!

"But though the general condition of the Panjáb peasantry is such as I have described, I would guard myself against being supposed to assert that such condition is universal. Here and there it may be that, owing to special causes, the state of the agriculturist is not so prosperous; for instance, on the banks of those great irrigation-works, the Western Jumna and Bárí Doáb Canals, there are cultivators whose physique and energies have been destroyed, and whose lands have been defertilized, by that fashionable panacea—high level irrigation. In their case, and in the case of other exceptionally circumstanced tracts, some relaxation of the demand may be required; but for such cases ample provision is made in the proposed enactment, for in clause (*d*) of section 15 it is declared that 'the Lieutenant-Governor of the Panjáb may by notification from time to time * * * exempt wholly or in part any portion of the territories under his government from the operation of this Act, or exempt any land from liability to pay the whole or any part of any rate under this Act, and cancel such exemption;' and it is matter for satisfaction that the working of this provision, as well as of the other provisions, of the enactment, will be in the hands of one who is perhaps better acquainted with the character, feelings and resources of the people of the Panjáb than any other living Englishman.

"But while there can be no doubt that the land-owners of the Panjáb can generally well afford to pay the slightly enhanced local rate it is proposed to levy, it is equally certain that the enhancement will be regarded, like the original rates imposed in 1871, as an addition to the land-revenue demand, and practically, if not literally, an infringement of the engagement made at settlement; and, do what you will, the Panjáb land-owner will continue of that opinion. Explain to him with all the lucidity a trained intellect can command that the land-revenue is the share of the rental taken by the Government, as proprietor-in-chief and that the local rate is a tax on rent taken by the Government as Government, and he will reply—in the present instance it is to be hoped with a smile—that this appears to him to be a 'distinction without a difference.' This being the case, it has been suggested in the correspondence which is before the Council and in the public Press, that it would be better, in the event of its being necessary to tax the agricultural population, to dissociate such taxation from the land, and levy it in some other shape, such as a house-rate or an income-tax. Theoretically, there is much to be said in favour of the proposal, but looking at it from a practical point of view, I cannot agree in the suggestion, for the practical inconveniences would, I feel sure, outweigh the theoretical propriety of the arrangement. Assuming, as we must assume, that the Government is not precluded by the land-revenue-engagements from levying an additional rate upon the land, and assuming, as we must assume, the necessity for taxing the agriculturist, I can conceive no other form of taxation less open to objection by the tax-payer than the one which has been adopted, namely, a percentage on land-revenue. Any other of the alternative forms of taxation which have been suggested has the great disadvantage of involving, *inter alia*, special enquiry and assessment and a special agency for collection; the form of taxation proposed in the Bill has the great advantage of involving nothing of the kind.

"We have now got thus far in the consideration of the Bill; we have attempted to show that the additional tax upon the land is insignificant in amount, that the Panjáb land-owner can afford to pay it, and that the form of taxation proposed is, upon the whole, the best that can be devised in his interests. The fact unfortunately remains, that the tax will cause a certain amount of dissatisfaction and distrust in the minds of the tax-payers. Not indeed that there will be any active discontent, for the land-owner in the Panjáb is far too loyal, far too well disposed, far too well off to think of disobedience; but there will undoubtedly be a feeling of dissatisfaction which it seems desirable, if possible, to mitigate, even if it may not be possible to remove it altogether. What, then, can be done to mitigate this dissatisfaction? Well, as to this, I think,

perhaps, we may learn a lesson from the past. In the year 1871, when the local rate was originally imposed, there was considerable dissatisfaction among the land-owners; but this has, we are told, completely died away. And why has it died away? Because it was arranged that the local rates should be made over to district committees on which the land-owners were to be largely represented, and spent before the eyes of the people in the districts for which it was raised: hence in the year following the imposition of the rates, the Lieutenant-Governor of the Panjáb was able to report as follows:—

"'Any dissatisfaction which may have existed at the time the cess was first levied has now died away, as the people *see* that the funds are expended for their benefit.'

"Now, I am perfectly aware that this course cannot be exactly followed in the present case. The funds cannot be made over to committees and spent in the districts from which they may be levied; but may not something be done to show the tax-payers and the public generally, clearly and unmistakeably, that 'famine-insurance' is not a mere pretext for raising money for general purposes, but that the tax is *bonâ fide* expended on the object for which it is raised? My friend, the Hon'ble Mahárájá Jotíndra Mohan Tagore, has dealt with this subject in a letter addressed by him to the Bengal Government in his capacity of Honorary Secretary to the British Indian Association, a copy of which has been laid before the Council, and his suggestions seem worthy of consideration."

The Hon'ble MR. COLVIN said:—"My Lord, I wish to make a few remarks upon the subject of the Land Rates Bill.

"Some doubts have been expressed, both in this Council and outside it, as to the propriety of adding any further to the contribution which is already made by the land towards the necessities of the State.

"I think that some of these doubts and objections may arise out of mistaken impressions relating to the history and nature, and the pressure, of our land-revenue upon the people, and that these may be dispelled by a further and fuller knowledge of the facts. The subject of the land-revenue in India is tedious and uninteresting, intricate in some of its details, and, above all, it is strange and unfamiliar. The ideas out of which it has grown, and which it has not yet ceased to represent, are so different from anything which we are accustomed to see in England, that it is not easy to get rid of the distorting medium which our English experience constantly interposes between ourselves and the true facts.

"Erroneous impressions about it, therefore, are not uncommon, and it may not be out of place if I recall what the actual position of the land-owning

class is in those Provinces to which the Bills now before the Council are intended to apply. I propose to do this as generally and briefly as it is possible for me to do. I must ask for the forbearance and patience of the Council if, in what I propose doing, I unavoidably go over ground which to many hon'ble members is only too familiar. But it would be difficult to make the arguments which justify additional taxation of the land easily intelligible to everybody, without first giving some sort of statement of the facts upon which they rest.

"The Land-Revenue in Upper India, as everybody knows, is only a portion of what would be called in Europe the landlord's rents. The State, or the Sovereign, is the paramount landlord in India, and the share of the rent taken by him in old times, however it may have been restricted in theory, was in practice limited by nothing but the power of the subjects to offer, in some shape or other, an effectual resistance to his demands. It is not an incorrect description, I believe, to say that this was the state of affairs to which the British Government succeeded in all of the Provinces to which the Bills before the Council relate when they passed into its hands. I mean, that the division of rents between the Ruling Power and the land-owning class was subject to no limitation except that of

> 'The good old rule, the simple plan;
> That those should take who have the power,
> And those should keep who can.'

"The precise amount of the share which was left by the proprietor in the early days of our rule cannot now be ascertained. It was supposed to be a certain portion of the total produce; but as nobody could say, either now or then, what the total produce is, this leaves room for indefinite speculation. It is pretty certain though, that in the earliest acquired Provinces, the North-Western Provinces, it was something less than one-fifth of the rents paid by the cultivators. For in 1822, when the first regular settlement was contemplated, and steps were taken towards adjusting the respective shares of the landlord and the State for a longer term of years than heretofore, it was declared that at least twenty per cent. of the entire rental of each estate should be left to its owners. In less than twenty years after 1822, fresh settlements, which lasted for a term of thirty years, were made, and by these the landlord's share of the rental was increased from one-fifth to one-third of the rental receipts. But the liberality shewn and concessions made by the State did not stop here. When the settlement for thirty years, which has just been referred to, expired, fresh arrangements were entered into, by which no less than half of the rental was given up to the land-owning class, and an equal division was made between them and the State of the profits derived from its ownership. This is still the proportion in which the rents are divided

between the two; one-half goes to the proprietor of the estate, and one-half into the public purse. This is an immense advance for what has become the landlord-class, from the poor and insignificant position which they occupied when they first came under the control of the British Government. Looking to the proportionate amount only of the rental which they now enjoy, and comparing it with their former share, we see that they are more than twice as rich as they were. But even this conveys no adequate idea of the great improvement which has taken place in their circumstances. It is not only that they have obtained a larger share of the produce, but that the value of that produce has enormously increased. Contrasting the present prices of agricultural produce with those of (say) sixty or seventy years ago, I doubt if I exaggerate when I say that its money-value has doubled, and it would perhaps be safe to say that the land-owning class as a body, instead of twice, are four or five times as rich as they were at the beginning of the century. An illustration of the progress made in the Panjáb has been given by the Hon'ble Member who spoke last, and the fact which he has mentioned, that land which used thirty years ago to sell for three or four times its annual value will now fetch twenty times the amount of its revenue and more, is true of many other parts of the provinces for which the Bills have been framed. Everywhere there has been an extraordinary rise in the value of land. The cost of living, on the other hand, has no doubt increased. So far as this is caused by a rise in prices of the commodities that the agricultural classes have to buy, it is of course a drawback to their prosperity; but in so far as it is due to greater comfort and a higher standard of living (and I believe this to be a more potent cause than the other) no abatement is necessary. Making all necessary drawbacks, the fact of their great advance in wealth and prosperity is too plainly evident to be called in question. It must be borne in mind, too, that whatever the industry and intelligence of the proprietary class may have been, this improvement in their position is, in very great measure, due to the direct action of our Government. It is scarcely too much to say that it has created proprietary rights in the soil. It has secured them by maintaining good order and tranquillity. And it has added indefinitely to their value by furnishing marvellously improved and accelerated means of communication, and by opening markets for the produce of the land, of which the people of two generations back never even dreamed.

"This is the history of the way in which the landed interests of the North-Western Provinces have been dealt with. It can scarcely be said that the conduct of the Government towards them has shown any inclination to oppression and rapacity. The history of the other three Provinces in which it is now proposed to add slightly to the taxation of the landlord-classes, differs in no

important respect from that of the North-Western Provinces. They passed into our possession later, when our policy had become more liberal; therefore they never received so small a share as the proprietors of the North-Western Provinces were restricted to in the early days of our rule. In none of them, speaking generally, has the Native proprietor's share been less than one-third of the entire rental since they became British territory. And now, I believe that it nowhere is a smaller proportion than one-half, indeed in many parts the proprietors are actually in the enjoyment of more than a half.

"So far I have spoken of what is generally meant by the word Land-Revenue when it is used in this country, that is, the Government-share of the rental in each estate.

"I come now to those Rates which are levied from land, in addition to the Land-Revenue. These Rates are taxation in a direct shape.

"They are not claimed as part of the great customary rent-charge which the State receives from the land and which constitutes its Land-Revenue. They are levied from time to time, as direct taxation, apart from that rent-charge, and are paid by the landlord out of that share of the rental which furnishes his own income. I will not stop now to consider the justice of this form of taxation, though it appears to me as right and just as taxation in any shape can be. I wish at present only to consider the nature and amount of these rates.

"They vary in the different Provinces to which the Bills before the Council are applicable. They are highest in the North-Western Provinces, where they amount to five per cent. on the rental. They are lowest in the Central Provinces, where they do not exceed two and a quarter per cent. In Oudh they are two and a half; and in the Panjáb $3\frac{1}{8}$ per cent. upon rental. A portion of these rates is old, and a portion of recent imposition.

"The five per cent. which is taken in the North-Western Provinces is no new taxation. It has been levied for a great many years past. I mention this because I have seen exception taken to the levy of the additional rate of one per cent. for famine-purposes, which is now proposed, on the ground that only so lately as 1871, the people of the North-Western Provinces were subjected to new and extraordinary taxation which swallowed up five per cent. of the entire rents of their estates. It is as well that a misapprehension of this sort should be corrected. The truth is that the Local Rates Act, 1871 (except as far as it related to that small portion of the North-Western Provinces which is permanently settled), did not impose any new taxation at all. It merely legalized rates which had been actually collected for a long time prior to 1871. It should be clearly understood that the one per cent.

now under consideration will, if passed, be the only new tax (excepting the Income Tax) which has been imposed upon the land-owning community of the North-Western Provinces as a body for the last twenty years or more.

"In Oudh, of the 2½ per cent. which the native proprietors pay, 1¼ was newly imposed in 1871, and 1¼ was of older standing.

"In the Central Provinces the 2¼ of the rental which is paid, dates entirely, I believe, from the last settlements, that is, from ten or twelve years ago.

"In the Panjáb the existing rates were first imposed in 1871. These rates are high, but we have heard from the Hon'ble Member who spoke last how very far they are from being a heavy burden upon the resources of the people, and how little dissatisfaction they created, though they were much heavier than the rate which is now proposed.

"The present relation between the State and the land, then, in the Provinces of which I am now speaking, may be summed up broadly thus:—That the State in its capacity of landlord, enjoys one-half of the rents paid by the land, and that it also directly taxes the native proprietors of the soil by rates applied to local purposes which range between two and a half and five per cent. of the entire rents that pass through their hands.

"The measures now before the Council, if passed, will raise the amount of this latter payment by one per cent. all round; and some doubts have been expressed, as I said at the commencement, of the propriety of such taxation.

"These objections, so far as I have seen or heard or understood them, have been directed partly against the justice of the proposal, and partly against its expediency.

"As regards the injustice of such taxation, it is said, in the first place, that the agricultural classes are already contributing more than their fair share to the general revenues of the country.

"Well, it is true that the land-revenue does supply rather more than two-fifths of the total public income of India. Judged by our European standard, this may naturally seem an excessive amount. But if we wish to judge rightly, the first thing that we have to do is to put European standards out of our head, and to consider facts, not as they exist in other countries, but as we

find them in this. If the landlords of England were compelled to-morrow to resign one-half of their rental to supply the public necessities, no doubt it would be felt as nothing short of confiscation. In India, as we have seen, taking one-half of the profits of land, is making a large and liberal concession to its owners. We must not lose sight of the fact that it is not the income which a man has never had, and which he has never dreamed of having, that he feels it an oppression to be deprived of. It is the money deducted from his ordinary and accustomed means of living that he misses, and the taking of which comes home to him as taxation. Looking at the question from this, which seems to me the true, point of view, and remembering that what they pay as Land-Revenue has never formed part of their income, I do not think that it can fairly be said that the proprietors of the land are unduly burdened. Their accustomed means of living, so far from being less, are much greater, than they were in former times. If we take the case of the North-Western Provinces, where the rates are considerably higher than anywhere else, and add the amount of them to what is paid to the State in its capacity of landlord, we find that out of every Rs. 100 of rental, not more than Rs. 55 go into the treasury, namely, Rs. 50 as Land-Revenue and Rs. 5 as taxation. If we add the Re. 1, which it is now proposed to take, it will be Rs. 56. Half a century ago, Rs. 80 would have been required; and up to twenty years back Rs. 66 would have been demanded by the State. The land-owners therefore are receiving much more, and contributing much less, than they have ever done in times past. I have taken the case of the North-Western Provinces as that in which the claims of the State are largest. The argument, of course, is still stronger in the other Provinces, where the payment made by the proprietors is smaller. In the face of these facts it seems to me impossible to make good any case for further indulgence towards agriculturists as a class. Assuming that they are in a position to contribute without hardship towards the funds which are required for the general protection of all classes from famine, I would ask, how they can be exempted from doing so without inflicting very great injustice on all other classes? The population of the Provinces to which the Bills now under consideration are intended to apply, is mainly agricultural. The proportion which the agriculturists bear to the entire population in them ranges between 56 and 64 per cent.—roughly speaking, it is about 60 per cent. We can judge from these numbers what the effect would be of exempting the agricultural class entirely. It would compel two-fifths of the people to pay for the support of the entire community in all future times of scarcity and famine. It seems to me sufficient to state a consequence of this sort, in order to show how impossible it would be for the Government, with any regard to justice, to exempt the agriculturists from taxation.

"I go on now to consider those objections which, without impugning the justice of taxing the profits of agriculturists, throw doubts upon the expediency of doing so. A principal objection of this sort is that the prosperity of the country mainly depends upon its agriculturists, that the great majority of these are very poor, and that to impoverish them further by taxation is,—if not to kill, yet to injure very seriously—the goose upon which we depend for our golden egg. Now the fallacy of this argument, as it seems to me, is that it confuses the cultivators of the soil with its proprietors. The cultivators do, no doubt, form the mass of the agricultural community, and I fear that many of them are very poor. But I agree with the Hon'ble Member in charge of the Financial Department in demurring to the next step in the argument, which is, that imposing one per cent. upon the landlords will make the cultivators poorer. I do not believe (generally speaking) that such a tax will affect them at all. The class which is taxed is that of landed proprietors—of men who live, not by cultivating the soil, but by enjoying the rent which is paid for its occupation by the actual cultivator. A powerful landlord, I am quite prepared to admit, can do a good deal that is irregular in this country, as in others, without being checked. But I think that this is very far from being true of all proprietors of land in the Upper Provinces of India, where large properties are the exception and not the rule; and I do not believe that illegal methods of transferring the incidence of this tax are likely to be generally successful there. Nor am I convinced that the legal powers which landlords have of enhancing their rents will help them to shift this tax on to their tenants. This will be evident if we consider the practical working of any attempt to do so. Suppose that a proprietor owns an estate with a clear annual rent of Rs. 100. He is enjoying Rs. 45 of these under the existing settlement, and paying Rs. 55 to the Government—Rs. 50 for Land-Revenue and Rs. 5 for rates. When the extra Re. 1 of taxation is imposed, he will be receiving only Rs. 44 and paying Rs. 56. Suppose, again, that this proprietor is entitled, under present rules, to enhance his rents, so that they will yield him Rs. 105 instead of Rs. 100, and that he does so. Still, by raising his rental, he has not recovered his extra Re. 1 of taxation. This right of raising his rents does not depend upon the taxation which has been laid upon him, but upon grounds altogether irrespective of that. He could have improved his rental therefore up to Rs. 105 in any case, and will still be poorer by the additional Re. 1 that he has to pay into the Treasury.

"I do not mean to say that calculations of this sort can pretend to anything like mathematical accuracy or to be of universal application; but, making every allowance for the working of unforeseen causes, I think that the most reasonable expectation regarding the incidence of the proposed tax is, that it will *not* fall upon the poor and laborious tenant-class.

"A further argument which has been used against the proposed tax is, that it is a breach of faith, and, as such, likely to lead to serious political dangers.

"So far as the tax can be said to have met with any opposition at all, I believe that the misgivings which have been felt have originated in feelings, more or less well defined, of this nature. And if such a feeling were deep-seated and universal, even though it might not be well founded, it would furnish a very strong ground of objection. It is worth while, therefore, to see what amount of real force is contained in it.

"In doing this, I do not purpose to waste the time of the Council by any arguments directed to show that no breach of faith is actually committed by the imposition of a rate upon land, distinct from, and in addition to, the fixed demand upon it on account of Land-Revenue. That controversy was fought out and settled some years ago, and the results of it have been sufficiently referred to by the Hon'ble Member in charge of the Financial Department in his speech to-day. Those who have still any doubts upon the conclusion which was then finally adopted—that the limitation of the Land-Revenue does not confer an absolute immunity from direct taxation in every shape upon the classes who pay it—can look back to the records of the discussions then held and they will, I think, find their doubts satisfied.

"I only wish now to say a few words upon the political importance which may rightly be given to any impression, right or wrong, on the minds of the people of this country, if there be such an impression, that they are being oppressed or unfairly dealt with.

"In the first place, I question whether the levy of an additional one per cent. will give rise to any strong feeling at all.

"In judging of its probable effect upon the people, I think we may dismiss from our minds all distinctions of Land-Revenue and land rating, of the State's share as landlord, and its requirements as tax-collector. It is not that I believe that these distinctions do not really exist. On the contrary, I have no doubt that they do, and that they are highly important. But I should not say from my experience that the people take much account of them. It has so happened that, from motives of convenience and economy, the manner in which the land-tax has been levied, and the machinery for levying it, have been the same as those by which the Land-Revenue has been collected. It is not by any means necessary that this should always be the case, and I hope that the advantages to be gained by changing the present mode of taxing the land, for one that distinguishes it more clearly from the Land-Revenue, will,

in time, outweigh what I admit to be at present the much greater counterbalancing advantages of the existing system. When that time comes, a distinction between Land-Revenue and Rates may perhaps arise in the minds of the landed proprietors who pay them. But at present I doubt if they draw any practical distinction between the two. They pay so much into the Treasury. The Government may credit the money as it pleases; but to their minds it is one payment, and the whole of it made out of their own pockets, because the actual cash has passed through their hands and they hold a receipt for it. It does not occur to them that the greater part of it, namely, that which represents their Land-Revenue, has been paid over to the Ruling Power in the same way by their forefathers from time immemorial, and that it will continue to be so paid through any length of future time that we can look forward to, by themselves and their descendants, and that therefore this money has never belonged to them in any proper sense of the word. But though this payment, regarded from their point of view, may be a large one, it does not seem so to them. They have always been accustomed to make it, and do not grumble at it. Nor do they trouble themselves with any nice considerations of the precise percentages in which the profits of the land should be divided between themselves and the State. All that they are concerned about is, that their means of subsistence should never be seriously curtailed. I hope that it has been sufficiently shown to the Council to-day, that there is no danger of any such considerable curtailment from the addition of another Re. 1 per cent. to their payments, and, as long as this is the case, though they may not like the extra payment—as who does like making payments—there will be no dissatisfaction, I believe, such as a Government need take any account of.

"So far as to the likelihood of any strong feeling being aroused by the measures before the Council. Next as to the 'breach-of-faith' objection, I cannot help thinking, when this argument is used by the tax-payers, that it is employed more for the effect that they hope it may produce upon those whom they are addressing, than because the argument carries any very great force to the speaker's own mind. The levy of cesses or rates in addition to Land-Revenue has been familiar to the people for generations, and in some of the provinces affected they have been paying much heavier rates than are now demanded for many years past without a murmur. If they had really felt this to be a breach of faith, I think we should have heard more of this objection before now.

"Again, any objection which is taken on this ground to the proposed tax, is just as applicable to an Income-tax, which has been levied from the agricul-

tural classes at different times during the past sixteen years. The cases are precisely similar. I know of no argument which applies to the one, that does not equally apply to the other. Yet, though I cannot say that the Income-tax was anything but an extremely unpopular tax in the part of the country where my experience has been, yet I do not remember that there was any strong or general feeling against it on this ground in Upper India. The agriculturists did not expect to escape from having to help in bearing the common burden, and submitted without serious discontent to their share of it during the continuance of the Income-tax. I do not know why we should suppose that they will be more suspicious and less reasonable now.

"I have referred now, as far as I am able, to the principal arguments which I have seen urged against further taxation on the land; but in conclusion, I would remark that they do not appear to have found anything like general expression. It is true that expressions of opinion in matters of this sort are apt rather to follow, than to precede, measures in this country. It is one of the recognized difficulties of the Indian Government that there are such imperfect means of ascertaining the sentiments, and feeling the pulse, of its subjects. In the provinces which will be affected, there is no Press which faithfully reproduces public opinion. That opinion must be sought for and found as best may be. The surest means that exist at present of learning the course of public sentiment is through the local officers of Government who are distributed over the country, who are in constant communication with people of all classes, and who will not hesitate to express frankly and fearlessly what they believe to be the general feeling of the country. Now, it is from these local officers that the Local Governments and Administrations derive their information, and by them that they are in great measure guided in their action. It is a significant fact, then, that of the Local Governments and Administrations concerned, with whom the responsibility will rest of collecting the tax, there is not one that has expressed any doubt or hesitation about the taxation of the land. They have on the contrary signified their cordial approval of it. This, I think, is the best assurance that it is possible for us to have, that the measure is not radically distasteful to the people affected, and the best assurance that there will be no great difficulties in enforcing it.

"But even if these difficulties were likely to be far greater than I anticipate, I do not the less think that it is not only proper, but absolutely necessary, to carry the proposed measures into execution. The taxation of the land must not be judged of by itself; it must be regarded in connection with the whole scheme of which it forms a part. That scheme is intended to provide for the

famine-expenditure of the whole country,—an expenditure which is no old and recognized want of the administration, but one, the necessity for which has only come to light within the last few years. It is a charge which the old ways and means of the Empire are quite inadequate to meet; and the money which is to be raised will be applied for the benefit of all. In providing the money for a new and general necessity of this kind, it would be so grossly unjust to exempt upwards of one-half of the population from stirring so much as their little finger towards lifting the common burden, that the difficulties and perils of any such course would, I am convinced, be far greater than any which can result from the measures which the Council are to-day asked to pass."

His Honour THE LIEUTENANT-GOVERNOR said:—"My Lord,—Though the measures now under the consideration of the Council do not immediately affect the Provinces under my charge, they are the outcome of a policy which applies to the whole country, and I hope that I may be permitted to say that I think that the explanation which has been given by the Hon'ble Member will be considered to be perfectly satisfactory. There is one fact on which my hon'ble friend has laid considerable stress, which cannot be questioned, and that is, that the policy in respect to famine-relief and famine-prevention, which has been accepted by the Government of India, I believe with the full concurrence of all parties both in this country and in Europe, cannot be carried out without an increase of means, and these means can only be obtained by an increase of taxation. This being admitted, I must say that it seems to me, and I find that it is the opinion of most well-informed and thinking men, that no measures could have been devised more likely to be efficient, equitable and unoppressive, than the measures which have been determined upon by your Excellency's Government.

"There is no question that the proper principle to follow in respect to the raising of revenue for such purposes as that which has led to the present schemes of taxation is, that all having a permanent interest in the welfare of the country should bear their share of its burdens. The measures now before the Council adjust the incidence of taxation upon all interests, whether trading or landed interests. And though it has been alleged that the taxation has been thrown altogether on the poor, the license-tax does not touch any of the quite poorest classes, because those who have incomes of less than Rs. 100 a year are exempt, and though it may be difficult for men who know nothing of the country to realise, practically a Native with an income of Rs. 100 a year is in a better position than a European trader or mechanic in Europe with an income of £100 a year; I am sure that every one really acquainted with

Native habits and modes of life and requirements will agree with me that this is so.

"I see that some objections have been raised to the levy of cesses on the landed interests of the North-Western Provinces on the ground that the cesses now levied do not extend to Bengal. Those who argue in this way seem entirely to forget that Bengal set the example of contributing such a cess to the Imperial Revenues, and last year relieved the Government of India of nearly £300,000, by imposing on the land, charges hitherto borne by the Imperial Government. It would have been most unreasonable and unfair that this taxation should have been maintained in Bengal while the landed interests of the rest of India were left free. Last year the only taxation imposed on the North-Western Provinces was a low license-tax, while Bengal raised enough to meet the demands of the Imperial Government by a cess on land: this year the Government of Northern India have supplemented their trades license-tax by a cess upon land, while Bengal has supplemented its cess upon land by a license-tax.

"It is nothing to the point to urge that the results leave the Bengal zamíndár in a better position than the North-Western Provinces zamíndár; that really has nothing to do with the question. The object of the present measures is, not to equalise the incidence of the assessments and charges upon land throughout India, but to levy an additional rate for a special purpose from one end of India to the other. Out of the money (£1,500,000) now required by the Government of India for the construction of works to prevent famine, Bengal will contribute £600,000, or nearly one-half; and the outcry that she has been unduly favoured is most unjust and unfounded. It must be remembered that, till the last settlement, the zamíndárs of the North-Western Provinces had to pay to Government two-thirds of their collections, while they retained one-third. For no very apparent reason, when the new settlement was made, they were only called upon to pay half, keeping one-half. Admitting as I do that it is sound policy of the Government of India to limit its demands on the country to its actual requirements, and to distribute the burden of taxation as evenly as is practicable on all classes of the people, I should be sorry to condemn the principles of the present settlement; but the fact remains that, if the present settlement had followed the lines of the old settlement in respect to the shares of Government and the landholders, Government would, setting new cesses aside, have received two millions more per annum than it receives now. And making all allowances for new cesses, including those now imposed, the land-owners of the North-Western Provinces are receiving 1½ millions more than they received before. And now that its imperative requirements have increased, I do not

consider that there is anything unjust or unreasonable in Government imposing upon the classes who received these great benefits the same burden which is imposed upon all other classes; and, after all, the entire fresh charge thrown upon the land-owners in the North-Western Provinces is only £80,000 or £90,000.

"Of course it requires no very great ingenuity to find some sort of objection, theoretical or practical, to every kind of tax; and I am sorry to have to say, that those who are loudest and most unreasonable and impatient in their demands that Government should take upon itself the liability of relieving and preventing famine, and of constructing extravagant works of irrigation, are the first to put into the mouths of the people reasons why no one should contribute anything towards such a purpose. But the money has to be raised, and this being so, I must congratuate Your Excellency's Government as to the substantially fair and even manner in which this liability has been distributed."

The Hon'ble SIR JOHN STRACHEY said:—"My Lord,—In the discussion that has now taken place on the Bills before the Council, several questions of importance have been referred to, but I have said already all that I feel called upon to say upon most of them, and some of these questions have been completely disposed of by preceding speakers. There are, however, still a few points which have been raised, on which it seems right that I should offer some further explanation.

"First, as to the suggestion that these taxes should be imposed only for a limited period of time, in the hope that greater economy in military expenditure or otherwise may render their retention unnecessary. This suggestion has not been repeated to-day, but it was made at one of our former meetings, and I then promised to notice it.

"In reply to this, I would remind the Council that, before the Government resolved to introduce these measures, it carefully enquired whether any present reduction of expenditure could be made, and for the reasons I before stated, it was satisfied that, so far at least as the Civil expenditure was concerned, no substantial relief could thus be obtained. In regard to the Home Military Charges, I sufficiently indicated the anxiety of the Government to obtain their reduction, or if that were not practicable, at least to prevent their increase. But here the remedy is neither in our hands nor in those of the Secretary of State for India. If any remedy is to be found, it can only be applied by the British Parliament. The circumstances, however, are obviously not such as to give any justification for our relying on such a reduction of charge as could affect our present calculations.

"Next, I must remind the Council that we have still not provided for a considerable part of the ordinary surplus of half a million, which we are bound to secure irrespective of the special surplus of 1½ millions to constitute the insurance against famine, and that we have reckoned on future possible increase of income or reduction of charge to make good the sum that we still had to provide.

"Again, it is to these possible improvements of income, or to increased economy, that we have to look for meeting those future unforeseen charges for which experience shows that we must be prepared, and we may consider ourselves fortunate if such charges can thus be met without fresh calls for taxation.

"Lastly, the causes which have led to our present demands are unfortunately permanent, and not temporary, and the resources we create to meet those demands must be permanent also, or at all events they must continue until evidence is forthcoming that such a change of circumstances has arisen as will justify our abandoning them.

"It was suggested at a previous meeting of the Council, and the proposal has been urged in a memorial received from the British Indian Association, that a separate fund should be created from the produce of the new taxes, for the objects now in view by the Government. I think it desirable to make a few observations on this subject. It may first be said that the money obtained by the new taxes will in fact be applied, either to discharge of debt, the special origin of which cannot be ascertained, or to the construction of useful remunerative works of precisely the same description as those on which a far larger sum has hitherto been spent year by year, partly obtained from the general revenues and partly from borrowed funds. It is not the intention of the Government to reduce this outlay; on the contrary, it hopes to be able to increase it. To create any separate fund, therefore, would be to make a perfectly arbitrary and artificial distinction between a small part of the outlay, say 1½ millions, and the larger part, say 3 millions, on works in themselves not really distinguishable in their character or objects. Such a division would be, not only useless, but mischievous, and could not practically be maintained. It would necessarily lead to artifices in adjusting the grants and accounts, which would create suspicion and cause much trouble to all concerned.

"In fact, what the Government desires is to establish a sense of the obligation under which it is placed in respect to the expenditure due to Famine, which shall be felt in the same way as the obligation to provide proper Courts of Justice,

Police, Education, and so forth. For none of these objects has it ever entered into the mind of any one to suggest a special allocation of the revenue or a separate fund. Nor can any greater reason be found for a separate Famine-fund than for separate funds for any of those other objects which are obligatory on the Government.

"The intention of the Government is to obtain the means of meeting the charges that arise in all parts of India on account of the relief of famine, whenever such calamities occur. This could not be done if the additional income obtained were specially allocated for expenditure in the Provinces where it was raised, and there never was any such intention. At the same time it is held to be desirable to employ the Provincial Governments in obtaining the funds, and in supervising their application so far as it takes the form of an investment in useful works of a remunerative character. It is with this exclusive object that it has been proposed to make the new taxes Provincial, so that the best possible agency shall be secured for their collection and for administering their outlay in detail.

"I will not attempt to state in detail the reasons why the persons responsible for the administration of the finances reject separate funds of all kinds, unless under very special circumstances, as productive of confusion and complication without any counterbalancing advantage. It will be enough, probably, after what I have already said on this point, to reconcile the Council and the public to the decision of the Government, not, in the present case, to create any separate fund, if I point out that any other determination might lead to results probably not contemplated by those who have suggested the establishment of a separate fund; I mean that this might involve the necessity for imposing more taxation. Suppose, for instance, that the produce of the new taxes were by law strictly set apart from the general revenues and paid into a separate fund only to be applied to specified purposes. If, then, any sudden change of circumstances arose, calling for seriously increased expenditure, or causing a considerable falling-off in the revenue, we should have to choose between the imposition of fresh taxes and the abrogation of the law constituting the fund; for I set aside the idea of meeting ordinary charges by borrowing as a course financially inadmissible. This dilemma might arise, though the pressure was likely to be only temporary; nor can any one say that such a contingency would be at all improbable, or that it might not occur at any moment.

"With all my desire to see the pledges maintained that we have given, as to the application of a sum not less than 1½ million as an insurance against famine, I think it would be irrational, under many circumstances that I can conceive, to

object to the temporary diversion of any necessary part of the revenue from this purpose, with a view to obtaining relief which might be no less urgently required than that which experience has taught us to be requisite in meeting famine. When I introduced these Bills, I used the following words: 'Without thinking of a future far removed from us, events might of course happen which would render it impossible even for us who have designed these measures to maintain our present resolution.' I now merely repeat this, though I equally repeat what I before said, that 'I hope no desire to carry out any administrative improvement, however urgent, or any fiscal reform, however wise, will tempt the Government to neglect this sacred trust.'

"While, however, I cannot give any hope of the constitution of any separate fund or account of the produce and application of these new taxes, I would remark that it has already been publicly announced by Her Majesty's Government in the House of Commons, that it is intended to take steps for placing before the public, in a clearer form than that hitherto followed, accounts of the Capital and Revenue income and outlay of the larger productive Public Works, whether carried on wholly or in part from borrowed funds. The Government is now considering the means by which this intention may best be acted on, and I trust that the reasonable desire of the public to receive in a full and thoroughly comprehensible shape accounts of the financial results of these undertakings will thus be complied with.

"The British Indian Association, in the paper to which I have already referred, have proposed as a proper and sufficient way of meeting the charge arising from famine, that the sum required to pay the interest on debt created in time of famine should be met by special taxation. It is precisely this view that the Government of India rejects as quite incompatible with proper financial principles. It is the capital charge that must be paid off, not the interest. To adopt the course proposed by the Association would lead to the constant increase of debt and taxation without limit—a course which cannot be admitted.

"The Association also appears to regard it as sufficient if provision is made from time to time for the discharge of the obligations arising from debt incurred in the past. It has not a word to say as to the future. Here, again, the policy of the Government is essentially different. The Government declares that it has exclusively in view the future, and that its primary object is to provide a revenue that shall enable it to meet future famines without permanent increase of debt or of annual charge on the revenues; and it proposes to combine with this a system which, by judicious application of

its increased means, shall secure the provision of those material improvements to the country which experience shows to be the best, nay, the only real, means of alleviating the pressure caused by famine when extreme drought occurs, while they are constantly adding to the wealth and prosperity of the people.

"It now, my Lord, only remains for me to acknowledge, on behalf of the Government, the loyal spirit in which our measures have been received by all classes of the public, and to thank the Members of the Council who have taken part in our deliberations, here or in Committee, for the aid and support which they have given us."

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADDITIONAL RATES (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY also moved that the Report of the Select Committee on the Bill for the levy of Additional Rates on Land in the North-Western Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADDITIONAL RATES (OUDH) BILL.

The Hon'ble SIR JOHN STRACHEY also moved that the Report of the Select Committee on the Bill for the levy of Additional Rates on Land in Oudh be taken into consideration. He said—"MY LORD,—There is only one point in regard to this Bill which I wish to mention. In all the Bills for imposing additional rates on the land, it has been assumed by the Government that no questions are now under discussion regarding the propriety of altering the law under which the existing rates on land are levied.

"On this ground we have not been able to meet the wishes which in regard to some matters have been expressed by the Local Governments, that this opportunity should be taken of amending the existing law.

"If such amendments are desirable, they must be separately considered hereafter. The sole object of our present measures is the imposition of new taxation for certain purposes. So far, therefore, as the existing rates on land in Northern India are concerned, our present Bills do nothing more than re-enact the existing law. To this general statement there is one exception only, and it is to be found in the present Bill relating to Oudh.

"In March last Act VII of 1877 was passed, authorising the Government of the North-Western Provinces to appropriate a sum, not exceeding one-tenth part of the local rates, for the purpose of meeting charges on account of railways and canals of general provincial utility.

"This Act has received the approval of the Secretary of State. The Lieutenant-Governor and Chief Commissioner of Oudh has, as the Council is aware, asked that a similar power to that which I have just described should be given to the Administration of Oudh, which has now been united to that of the North-Western Provinces. The Government considers that the circumstances of Oudh are so similar to those of the neighbouring Province, that there can be no objection to applying the same principle in both cases.

"This view has been adopted by the Select Committee, and, in accordance with the wishes of the Local Government, the necessary alteration has been made in the Bill as it was originally introduced."

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ADDITIONAL RATES (PANJÁB) BILL.

The Hon'ble SIR JOHN STRACHEY also moved that the Report of the Select Committee on the Bill for the levy of Additional Rates on land in the Panjáb be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY then moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said:—"I have listened with great attention, and, I may add, with great satisfaction, to the comments made to-day upon the Bills which this Council has now passed into law. I do not wish

to detain unnecessarily the attention of the Council; but, before I put the last question moved by my hon'ble colleague, I desire to make a few observations on the origin and objects of the policy embodied in those Bills.

"Now, when this Government undertook the onerous task of effecting, in the revenues of the State, an increase sufficient to enable them to provide an insurance-fund for future famines, I certainly could not have ventured to hope that the measures which, under the experienced guidance of my hon'ble friend and colleague, Sir J. Strachey, we prepared for that purpose, would have been discussed so generously, and received so favourably, as they have been, by this Council, and by all classes of the community represented in this Council. Those measures I can honestly affirm to be, at least, the result of long and anxious deliberation, guided by a scrupulous study of the social interests affected by them, and animated by a most earnest desire not consciously to add one unnecessary fraction to the existing burdens of the community. But taxation is an instrument which painfully resembles that of the dentist. Resort to it is, unfortunately, often necessary; but it is never pleasant to the patient, even though it may promise him relief from acute distress; and the operator is fortunate if his fingers be not bitten by the teeth he is called upon to extract. In the present case, although we have endeavoured to inflict as little pain as possible in the performance of an unavoidable operation, we were not unprepared for a little natural shrieking. But the success of the operation has been largely due to the admirable behaviour of the patient: and, on behalf of our present measures, I feel bound to express the thanks of the Government, first of all, to those local Administrations on whose valued co-operation our whole financial policy is so largly dependent; secondly, to the Press of India for the discriminating judgment and high public spirit with which it has recognized the difficulties of our position, the sincerity of our good intentions, and the necessity of our present action; thirdly, to those enlightened exponents of Native opinion who have generously acknowledged the justice of the principles on which we have based our measures; and, finally, to the Members of this Hon'ble Council for the practical aid they have given to the improvement of those measures in Committee, and the moral support with which they have honoured them in their passage through debate.

"Our measures, however, have not been wholly exempt from criticism; but their most adverse critics have been the persons who are least acquainted with the details of them, and none of those critics have favoured us with any practicable proposals in substitution of our own. They have told us, neverthe-

less, that, if these measures are well received, it is not because they deserve to be well received, but because those who have so received them are not affected by them, and those who are affected by them cannot make themselves heard. In short, to put the case as it is put by one of our censors, we have heaped upon that willing horse, the poorer classes, all the burdens which ought to have been placed upon gayer steeds.

"Now, undoubtedly the taxes which will come into operation by the passage of the Bills before us must, to be successful, have a wide incidence. But the same condition applies to taxation in all countries, as well as to taxation in India; and in India, where the mass of the population is poor, it is impossible to obtain a large increase of revenue, such as we now require, from any tax which falls mainly on the rich. Vast private fortunes certainly exist in India; but the owners of large fortunes constitute but a very small proportion of the population; and I know of no circumstances which would justify, or any process short of confiscation which could enable, the Government of this country to concentrate upon the backs of its few rich subjects the main burden of that taxation which is necessary for the protection and improvement of its many poor ones. The European community in India, non-official as well as official, is a very hard-working, but certainly not a wealthy, one; and it was one of the most remarkable facts of the old income-tax, that only a comparatively small portion of the whole revenue obtained by that tax was covered by the upper layer of the schedule.

"My hon'ble colleague, Sir John Strachey, has already shewn that it would be a gross misrepresentation of the present license-tax to say that it falls only on the very poor; and that, as a matter of fact, this tax touches no section of the community which can be fairly regarded, or rated, as other than a well-to-do class, if due regard be had to the known standard of life in India. But, then, we have been told by some other critics that we ought not to have exempted from the operation of this tax official and professional incomes. Now, I will not dwell upon the fact that the continued depreciation in the exchangeable value of silver has already very grievously reduced the incomes of those Government servants who, during the past two years, have been so nobly labouring (many of them at a great sacrifice of health, some of them at the sacrifice of their lives, all of them with a prolonged sacrifice of personal comfort), in aiding the Government to preserve the lives of its subjects from famine. I will not pause to ask whether a further deduction from their pay would be the State's fitting reward to its brave soldiers in that great campaign against so formidable an invader. But, of course, had we decided to tax official incomes, we could not possibly have exempted from taxation professional incomes of all

kinds; and, if taxation were extended to professional incomes, where could the extension of it be stayed? At what further point could we have legitimately limited our application of the principle under which income was taxed? There is no conceivable form or source of income, whether derived from land, commerce, investments in public securities, the profits of literature, science, industry or anything else, which could, in that case, be fairly exempted from taxation. And thus we should be brought,—inexorably brought,—to what is really the only practical alternative to our present measures—the revival of the hated income-tax.

"Now, no one can acknowledge more readily than I do that a scientifically adjusted tax upon all denominations of income is, *primâ facie*, wherever such a tax be practically possible, the wisest and fairest distribution of the public burden. The old Indian income-tax did not completely fulfil these somewhat ideal requirements. Its incidence was unequal, and its assessment a fruitful source of perennial grievance. But, for my own part, I confess that, had I found it in existence, I think my inclination would have been rather to reform and maintain it at a minimum rate than to abolish it altogether. Science, however, may sometimes prolong the existence of the living; but it is another matter to resuscitate the dead. The income-tax was abolished by the administration of my predecessor; and I have no doubt that those who abolished it, and who were in the best position to judge whether the popular opposition to it was well justified, had good grounds for their conclusion that its theoretical merits and ascertained financial convenience were insufficient to compensate the practical social mischief of the general heart-burning with which it was regarded by all classes of the community. Our predecessors, when they abolished the income-tax, not appreciating, as we were bound to appreciate them, the great additional burdens likely to be caused by famine, did not provide any other means of meeting financial emergencies, foreseen or unforeseen. Thus, with a depreciated silver standard, which greatly enhances the cost of all liabilities payable in gold, the present administration has been suddenly called upon, not only to pay the heavy bill for two years of unprecedented famine, but also to make pecuniary provision for the insurance of the country against future calamities of a similar character. Now, I need hardly point out how much more difficult it is to revive an unpopular impost than to retain it. But I can truly assert that the present Government of India would not for a moment have shrunk from confronting that difficulty, had it not recognized in the measures now before the Council a wiser and a sounder policy. The task we have undertaken, and which we hope to accomplish, is, not to distribute the

public burdens according to *doctrinaire* ideas of abstract science or symmetrical perfection, but to provide sufficiently for the present requirements of the State in the manner least provocative of social inconvenience and popular discontent, by distributing the incidence of the burden which has to be imposed, along what is indicated, by the actual circumstances of the country, as the line of least resistance.

"We have felt that the two great classes of the community from whom we could most equitably collect our famine-insurance-fund are the trading and the agricultural classes. The grounds of this conclusion have been lucidly explained by my hon'ble friend, Sir John Strachey, and I need not now revert to them. The first step in the taxation requisite for the fulfilment of the obligation imposed upon us was taken last year in the shape of a cess on the agricultural classes of Lower Bengal. This year it is supplemented in that province by a license-tax on the trading classes. In the North-Western Provinces the basis was laid last year by a contribution levied from the trading classes; and that contribution will now be supplemented by a cess upon the agricultural classes.

"The necessity of a famine-insurance-fund, and the duty of the Government to provide such a fund, have been generally acknowledged. But equally general must be, I think, the acknowledgment that, in our selection of the sources of this fund (which are necessarily limited), we could not, with any show of reason or justice, have maintained the agricultural cess in Bengal had we shrunk from subjecting to a similar obligation the agricultural classes in the other provinces of Northern India. On that point, I think, the observations of my hon'ble friend the Lieutenant-Governor of Bengal are quite unanswerable. Nor is it less undeniable that, from the same point of view, and for the same reason, we could not justly maintain the license-tax upon the trading classes of the other provinces, if we did not impose it also on the trading classes in Lower Bengal.

"I think, then, I may fairly claim for the measures now before the Council at least the modest merit of an equitable distribution of famine-charges between the two great classes of the community who are, collectively, best able to bear them, and on whom such charges most reasonably fall. I think that no apology is needed, either to the community at large, or to those classes in particular, for our decision not to resort to the revival of the income-tax. But one thing I cannot too plainly or positively assert. Had we failed to secure the assent of this Council to our proposed taxes upon trade and landed property, we should have had no choice but to revert to the obnoxious income-tax.

There is absolutely no alternative that would adequately meet the requirements of the present occasion.

"In speaking of the agricultural cess, I have not alluded to Madras and Bombay, because, as the Council is aware, we have decided not to extend this tax to the two Southern Presidencies. Our reason for that decision has been twofold. In the first place, we considered that, after two years of severe famine, the agricultural classes of Southern India are scarcely in a condition to bear any present increase in their direct contributions to the State; but our second reason for not augmenting the direct taxation of these classes in Bombay and Madras was really our chief reason; and it was that, on altogether other grounds, quite independent of our requirements on account of famine, it had become necessary to increase the salt-duties of those Presidencies. It thus happens that, in consequence of the steps taken in the prosecution of a great fiscal reform, which has been the continuous aim of the Government of this Empire under at least four successive administrations, we have found ourselves justified in relieving the agricultural classes of the two Southern Presidencies from additional taxation which, at a time when other parts of the Empire were being subjected to increased burdens, we could not otherwise have foregone.

"Now, here I would ask leave to remind the Council that the taxation of salt is a part of the fiscal system which the British Government inherited from the Native Rulers of India. The history of our present salt-duties is a separate one for each province. Except in one respect, which I will mention immediately, these provincial duties have had no connection with each other; and hence that irregularity in the rates of them which the Government of India has always desired, and is now endeavouring, to rectify. The only historical connection between these local salt-duties is to be found in the common origin of additions made to them in connection with the abolition of a mass of most vexatious transit-duties with which the whole surface of this Empire was formerly covered. Under Native Rule, tolls were taken on all roads and navigable rivers; and, in spite of their irregularity, these early transit-duties were probably less harrassing to trade than the forms which they subsequently assumed under the Regulations of the East India Company; for those Regulations added to the original tolls all the refinements and checks of an elaborate customs-system. About half a century ago, the Government, recognising the intolerable inconvenience of these multiplied checks upon internal trade, decided to abolish them and substitute for them higher rates of duty upon salt. This great reform is mainly due to the enlightened advice of Sir Charles Trevelyan, then a

member of the Bengal Civil Service. Thus, by the Act of 1837, the salt-duty in Bombay was fixed at eight annas per maund, and, early in the following year all the transit, or inland customs, duties were abandoned in that Presidency. The town-dues, trade-taxes and other imposts of a similar nature were relinquished in 1844; and the Bombay salt-duty was again raised to twelve annas per maund. The fiscal result of these reforms was investigated in 1855, and it then appeared that the extinction of the condemned imposts had involved a loss of revenue amounting to more than 34½ lákhs of rupees, whilst the enhanced duty on salt had yielded only a revenue of less than 21½ lákhs. Thus, on behalf of fiscal reforms in the Bombay Presidency alone, the Government had sacrificed more than 12¾ lákhs of rupees. In Madras, the loss of revenue incurred on behalf of the same purpose was still greater. The transit and inland-customs-duties, which the Act of 1844 abolished in that Presidency, had yielded a nett revenue of about 31 lákhs of rupees. In abolishing them, the Government raised the price of salt to rupee 1-8 per maund; but, under the orders of the Court Directors, no more than 1 rupee per maund was levied for many years. This increase in the salt-duty yielded less than 9½ lákhs, while the revenue already surrendered had amounted to 31 lákhs. Again, in 1853, the tobacco-monopoly in Malabar and Canara was also relinquished; and finally, in 1860, the Government abolished the trade-tax, which yielded about 11 lákhs of rupees. Thus, the slightly increased salt-duty in Madras was accompanied by the surrender of about half a million sterling of revenue.

"I think these facts sufficiently prove that the history of the southern salt-duties is not one which the Government of India has any reason to recall with self-reproach. I may add, however, that a similar policy has been pursued in Bengal and the upper provinces of India. The Bengal transit-duties were abolished by the Act of 1836, and the Bengal salt-duty was fixed in the following year at rupees 3-4 per maund. The Act of 1843 abolished all import and export-duties on the frontiers of the North-Western Provinces, with the exception of the duties on salt, sugar and cotton; and the cotton-import-duty was abandoned in 1855; the salt-duty in the North-Western Provinces having been fixed in 1843 at rupees 2 per maund, with an additional assessment of rupee 1 on all salt passing eastward of Allahabad. The annexation of the Panjáb was followed by an increase of the salt-duty of that province; but that increase was part of a general measure which extinguished simultaneously all the export, import, transit and town-duties previously levied in the province. It will thus be seen that the present system of comparatively high salt-duties in British India is the result of an enlightened and beneficent fiscal policy, which has relieved British India from a multitude of mischievous and vexatious

imposts on internal commerce; imposts described by a competent authority as being 'so full of inequalities, and anomalies, and complications, that it would be vain to enquire from what objections or what abuses they were free.'

"In 1868, Sir George Campbell, then Chief Commissioner of the Central Provinces, strongly advocated the introduction of these principles into the Native States of Rájputána. 'Might not the Native States,' he said, 'be induced to accept our system as, on the whole, the most justifiable; that is, to substitute a high salt-duty for all internal duties whatever? To some extent the burden would thus fall more exclusively on the poorer of their subjects; but, then, the system of constantly recurring transit-duties is so wasteful, and involves a burden so much greater than the nett gain to the State, that even to the poor the substitution of a high, but not excessive, salt-tax, collected cheaply and without vexation at the source of supply, would probably be a gain.'

"It is obvious, however, that we cannot carry out such a policy without correcting the inequalities which still unfortunately exist in the local rates of our own salt-duty. Now, the history of these inequalities deserves attention. I have already pointed out that, excepting their common origin, the present salt-duties have no connection with each other; and I have mentioned the rates of the duty upon salt, under which the present fiscal system was first established in the different provinces. Those rates have subsequently undergone various modifications; which, however, have, unfortunately, not tended towards their equalization. In Lower Bengal, the duty of rupees 3-4 per maund was gradually lowered to rupees 2-8, until, in 1859, it was again raised to rupees 3, and, in 1861, to rupees 3-4, which was the original rate. In the upper provinces, the rupees 2 duty was raised in 1859 to rupees 2-8; and, in 1861, when the Government abolished the differential duty on salt passing eastward of Allahabad, the rate for those provinces was raised to rupees 3 per maund. Meanwhile, in Madras the original rupee 1 duty, or rather the Government selling price, was gradually doubled. In 1861 it was raised to rupee 1-8; in 1866 to rupee 1-11; and in 1869 to rupees 2; whilst the import-duty was kept a few annas lower than the Government selling price. In Bombay, the 12 annas duty was raised, in 1859, to rupee 1; in 1865 to rupee 1-8; and in 1869 to rupee 1-13. The fact is, that the improvement which, under British Rule, has been effected in the communications between Madras and Bombay, had, at length, made it very desirable to place the salt-duty in each of those two Presidencies as nearly as possible on the same footing; and, under the financial administration of Mr. Massey, this policy was adopted, not for the purpose of additional

taxation, but of fiscal reform. So long as this country was destitute of rail-roads, the inconvenience of a salt-duty, assessed at different rates in different provinces, was not seriously felt. The cost and difficulty of carriage prevented the lower taxed salts of one province from displacing the higher taxed salts of another; but when intercommunication had been greatly cheapened and accelerated by steam, then special measures became necessary for redressing or preventing the mischievous effects of these inequalities in the salt-duties. Thus, an inland customs-line was maintained solely to prevent salt taxed in Bombay at rupee 1-13 per maund from entering Bengal, where the salt-duty was levied at rupees 3 and rupees 3-4 per maund; and when that part of the customs-line was abolished in 1874, then other measures were devised for the same purpose, an increased freight or mileage-duty being levied on all salt carried by rail from Bombay into the Central Provinces. I need not here refer to the great customs-line so frequently and eloquently denounced by my hon'ble friend, Sir John Strachey, which still, unfortunately, exists for the sole purpose of intercepting, many miles from its sources of supply, the untaxed salt of Rájputána, and prohibiting its entry into British territory. I share the opinion of my hon'ble friend that the continued maintenance of this line is a great commercial and political scandal; and I sincerely trust that the history of the present administration may be associated with the removal of that scandal. I may mention here that, since the year 1875, the Government of India, always aiming at the eventual abolition of this great salt-cordon, has been able to effect a saving of five lákhs of rupees by continuous reductions in the establishment of it. But we could not invite the co-operation of our neighbours on behalf of a great fiscal reform which will, we believe, be ultimately beneficial to the whole Empire, if we shrank from simultaneously inviting the co-operation of our own provinces towards the attainment of the same result, even though it should involve some slight intermediate sacrifice on the part of some of them; and the form which such co-operation must necessarily assume is the equalization of our own salt-duty. Now, that is a policy which has been, for many years, if not pursued, at least proclaimed, by the Government of India. In 1868, when the Madras and Bombay salt-duties were only rupee 1-8 per maund, while the salt-duty was assessed in Bengal at rupees 3-4 per maund, and in the Upper Provinces at rupees 3 per maund, Lord Lawrence's Government thus addressed the Secretary of State:—

"'We consider,' said His Excellency in Council, 'that there can be no justification for maintaining this excessive difference any longer than financial necessity shall require. There is no real reason why the people of Bengal

and Northern India should pay a higher salt-tax than the people of Madras and Bombay; or why the people of Madras and Bombay should not pay as much as the people of Northern India. The population of Madras,' he continued, 'is, at least, as well off as, and the population of Bombay is even better off than, the population of the Bengal Presidency. The prices of salt in Madras and Bombay are generally lower, cost of production cheaper, and the distance of transit less, than in most other parts of India; and the North-Western Provinces, where a high rate prevails, are subjected to particular disadvantage relative to most parts of India, by reason of distance from the source of supply and difficulty of transit; so that the difference of duty ought to be in favour of these provinces, instead of being, as it now is, much against them.'

"Again, the same despatch significantly observes that, 'financially, it is not possible to bring the standard of the Bengal Presidency down to the standard of Madras and Bombay. We ought, however, to give Northern India that relief which it needs, and to which it is justly entitled; and we might reasonably call upon Southern India to bear a somewhat fairer share than it now does of the burden falling on the salt-consumption of the country generally.'

"Finally, Lord Lawrence's Government declared that the equalisation of the salt-duties, by raising the rates of Madras and Bombay, and lowering those of Northern India, was an object to be steadily kept in view. In reply to the despatch from which I have just quoted, the Duke of Argyll, who was then Secretary of State for India, made the following observations:—'On all grounds of general principle, salt,' he said, 'is a perfectly legitimate subject of taxation. It is impossible in any country to reach the masses of the population by direct taxes. If they are to contribute at all to the expenditure of the State, it must be through taxes levied on some articles of universal consumption. If such taxes are fairly adjusted, a larger revenue can thus be raised, not only with less consciousness on the part of the people, but with less real hardship to them, than in any other way whatever. There is no other article in India answering this description upon which any tax is levied. Salt appears to be the only one which at present in that country can occupy the place held in our own financial system by the great articles of consumption from which a large part of the imperial revenue is derived. I am of opinion, therefore, that the salt-tax in India must continue to be regarded as a legitimate and important branch of the public revenue.'

"This despatch from the Secretary of State was communicated to the Government of Madras, but without any intimation of the wishes of the Government of India in regard to the subject of it. The Government of

Madras, however, was at that time administered by a man of rare ability and energy, whose great talents, and quick perception of sound principles, were at all times exerted with the wisdom and loyalty which specially distinguished his administration, in willing harmony with the efforts of the Government of India, on behalf of imperial, as superior to local, interests. I think that my hon'ble colleague, Sir Alexander Arbuthnot, by whom Lord Napier himself was so ably assisted and loyally supported, will confirm the justice of this tribute, which I feel bound to bear, not merely to the brilliant abilities of Lord Napier and Ettrick, but also to the excellent practical results of that uninterrupted harmony of purpose and action in the relations between the Government of India, under the administration of Lord Mayo, and the Government of Madras, under the administration of Lord Napier, for which the Supreme Government was indebted to that statesman. Thus, shortly after the communication of the Duke of Argyll's despatch to the Government of Madras, Sir J. Strachey was enabled to inform the Legislative Council of this Government, that the question 'had been taken up quite spontaneously by Lord Napier, whether the provinces under his administration might not co-operate in the great work of giving the people of less fortunate parts of India an ample supply of salt, equalizing the duties, and facilitating the abolition of the inland customs preventive line.' But it is only fair that I should quote Lord Napier's own words:—'The Government of this Presidency,' he said (*i. e.*, Government of Madras), 'is not asked to make a sacrifice for a revenue interest merely. It is asked to make a sacrifice for the welfare of the greater number of Her Majesty's subjects, and for the general good of trade.' The Madras Government consequently proposed to increase the Madras salt-duty by three annas at once, and subsequently by two additional annas, should the first increase prove to have been attended with no evil consequences. Then, in 1869, Lord Mayo's Government, with the concurrence of the Governments of Madras and Bombay, raised the salt-duty in those presidencies by five annas per maund, distinctly explaining that this step was not taken merely to increase revenue, but specially to facilitate the equalisation of duties, and the eventual abolition of the inland customs-line. And it is satisfactory to find that the increase in the Madras salt-duty from rupee 1 to rupee 1-11 per maund was followed by a very considerable increase in the consumption of salt by the population of that Presidency.

"Then we come to the year 1876-77, when the Government of my immediate predecessor, Lord Northbrook, proposed a further increase of 3 annas per maund in the Madras and Bombay salt-duties, unaccompanied by any reduction in the salt-duties of Northern India. The Secretary of State apparently attri-

buted this proposal to financial pressure created by a rapid fall in the price of silver; and he withheld his sanction to it, under the impression that circumstances might prove that the Government of India had exaggerated the probable duration and future intensity of that phenomenon; in short, that it would be unwise to make a permanent change, to meet what might be a temporary difficulty. Lord Northbrook's Government explained to the Secretary of State that the chief motive of its proposal had been a desire to effect an approximation towards the equalization of the salt-duties, and the more comprehensive revision of those duties, which it had long regarded as an important financial improvement. It also considered that the measure, if adopted, would have involved important administrative advantages, by enabling the Inland Customs Department to curtail some part of their obstructive line, and it added an expression of its belief that there were very sufficient reasons, both financial and administrative, for carrying out that part of the measure which would have imposed small additions to the tax on salt in Madras and Bombay; still leaving the salt consumed in Upper India taxed 50 per cent., and the salt consumed in Bengal taxed 60 per cent., higher than the salt-consumption in the Southern Presidencies.

"Finally, during the first year of my own administration, my late colleague, Sir William Muir, just before he resigned his charge of the Financial Department, placed on record a Minute strongly recommending the immediate revival, even in the middle of the financial year, of the above-mentioned proposal to raise the salt-duties in Southern India, without lowering the salt-duties in Northern India. But, in this Minute, Sir William Muir went even further than Lord Northbrook's original proposal. For whilst, on the one hand, he proposed to raise the salt-duties in Madras and Bombay at once to rupees 2-8 per maund, on the other hand, he proposed, instead of lowering the Bengal salt-duty, to raise it also by 4 annas per maund; and, in support of these proposals, he appealed to his intimate experience of the people of the North-Western Provinces to prove that even a three-rupee duty does not anywhere press sensibly upon the population.

"Now, I felt unable to adopt the proposals thus urged upon me by Sir William Muir, and I wish to mention why. It has always appeared to me that a substantial increase in the salt-duties of Southern India is a perfectly legitimate, and even salutary, measure; provided only that measure be deliberately adopted, not as a temporary financial expedient for raising revenue at a pinch, but as the integral and necessary part of a well-considered comprehensive plan, which has previously been ascertained to be practicable, for

getting rid of all our inland customs-lines, equalising the rates of the salt-duty in all our provinces, and thus providing the whole population of the Empire with a practically unlimited supply of adequately cheap salt. But the proposals of my late colleague fulfilled none of these conditions. I considered that, before calling on the Governments of Southern India to make some reasonable sacrifice on behalf of this great fiscal reform, it was incumbent on the Government of India to do what it had hitherto not done; that is to say, to ascertain, by negociation with the Native States of Rájputána and Central India, whether there was any practical prospect of realizing, within a reasonable period of time, the paramount object to which all the present or prospective alterations in the rates of the salt-duty in British India should, in my judgment, be subsidiary; namely, the abolition of the inland customs-lines. In the next place, I considered that, whenever we raised the salt-duties in Southern India, nothing but an overwhelming pressure of financial responsibility ought to prevent us from endeavouring to effect at least some simultaneous reduction in the salt-duties of Upper India. In conformity with these principles, the Government of India has, for more than twelve months, been assiduously labouring to carry out a thoroughly sound fiscal reform in the levy of the salt-duties.

"I would now ask permission to state to the Council, in a general way, what we have actually done, and what we hope to do, in this matter. Our first step was to enter into confidential communication with the Native States I have already mentioned, for the purpose of obtaining their acquiescence in our control over the salt-sources in their territories, and thus enabling us to tax all salt at the places of production, and so abolish our present barbarous inland customs-cordon; upon conditions equitable, and indeed liberal, as regards the financial interests of the Native States concerned and the social interests of their subjects. Now, the Council will not expect me to explain the details of these negociations, which have been going on for several months; but I think I am in a position to assure it that at present they are far advanced towards a satisfactory completion. We have approached the Native Governments with every consideration for their legitimate interests. We have been met by those Governments in a friendly and reasonable spirit. We have received from them much valuable information and suggestion; and we have formulated our own proposals in careful accordance with the information and suggestions thus received. The result is, that I feel justified in anticipating, at no distant date, the conclusion of arrangements with the great salt-producing States of Native India which, whilst satisfactory to them, and to us, from a financial point of view, will render possible

the introduction of a great fiscal reform, generally advantageous to the population of the whole Empire. It is evident, however, that, if our negociations be attended with the success I anticipate, the first question we shall then have to determine on our own behalf will be the duty to be levied on salt at the places of production. Now, until our recent salt-measures were adopted, that is to say, only a month ago, the rates of the salt-duty levied on British territory surrounding Native territory, varied from 8 annas per maund in Sindh, and rupee 1-13 in Bombay, to rupees 3 per maund in the west and north, by a gradual increase of mileage duties along the south; so that the maximum duty of rupees 3 in the Panjáb was in direct contact with the minimum duty of ½ a rupee in Sindh. Now, I think the Council will perceive at once that, had the recent alteration not been effected in the salt-duties of Southern India, it would have been extremely difficult for this Government to decide at what rate Rájputána salt should be taxed at the various places of production, so as to permit the removal of the customs-lines without serious loss of revenue to the British Government. If the Bombay rate of rupees 1-13 per maund were adopted, then salt taxed at this rate would, in the absence of the preventive line, pour into the Panjáb, the North-Western and the Central Provinces of India, displacing in those provinces the salt taxed at rupees 3 per maund. If, on the other hand, the higher rate of rupees 3 were adopted, then Rájputána itself would be flooded with the cheaper salt of Sindh and Bombay, and the Rájputána salt-industry would be killed. Moreover, whenever the Rájputána State Railway is completed to Ahmadábád, and even, perhaps, before the completion of that railway, the Runn salt of the Bombay Presidency, a first class salt, admirably adapted for carriage without waste, would enter and permeate the whole of Northern India now within the customs-line, at a cheaper rate than the difference of duty, thus widely ravaging our salt-revenue. I venture to maintain, therefore, that an equalisation of the salt-duties in British territory surrounding the salt-producing Native States is a necessary preliminary to the abolition of the inland customs-line; that in the advanced stage of our negociations with those States it was incumbent on us to lose no time in making an appreciable approach towards the establishment of such an equalisation in our own salt-duties; and that no measure adopted for that purpose could practically be confined to the territories I have mentioned. The Madras duty must be on the same level as the Bombay duty; and the duty in Lower Bengal must not be very much higher than the duty in the Upper Provinces; for, otherwise, the dearer salt would be entirely displaced by the cheaper salt, to the great disturbance and injury of trade. Now, I grieve to say that, in the present state of our finances, it was simply impossible for us to lower the rates in Northern India

down to the level of the rates in Southern India. Such a measure would have involved the loss of at least 1½ million sterling of revenue. We had, therefore, to choose between raising the rates in Southern India, without making any simultaneous reduction in the rates of Northern India, or making an addition to the rates in Southern India considerably larger than the simultaneous reduction effected in Northern India. It is the last of these two courses that we have now adopted in the belief that it is the fairest. We have not raised the rates in Southern India without effecting at least some simultaneous reduction in the rates of Northern India; and I assert that this is more than any previous Government of India has done towards the establishment of an equilibrium in the salt-duty upon equitable principles, and at a level which, if high in the first instance, will, I trust, be found susceptible of gradual reduction to a minimum uniform rate. We have raised the Madras and Bombay duties to rupees 2-8; that is to say, we have increased them by 11 annas per maund: but we have simultaneously lowered the salt-duties in the Upper Provinces of Northern India by 4 annas per maund, and in the Lower Provinces by 2 annas per maund; so that, at the present moment, the salt-duty in the Southern Presidencies stands at rupees 2-8; in Lower Bengal at rupees 3-2, and in the Northern Provinces at rupees 2-12, per maund. I must again remind the Council that we have not made these alterations in the rates of the salt-duties without having first assiduously laboured to secure practical guarantees for the early accomplishment of that great and beneficent object which will, when accomplished, complete the fiscal reform, of which these measures are but the necessary preliminaries; and, in this respect also, I think I am entitled to assert that the present Government of India has done more than any of its predecessors have attempted to do, in furtherance of the fiscal policy which all its predecessors have advocated and proclaimed. The inequalities which still remain in the assessment of the salt-duty are sufficiently inconvenient; and it is my earnest hope that the present Goverment may have an early opportunity of still further approximating the rates in Northern India to the existing rates in Southern India; for we calculate that a uniform rate of rupees 2-8 per maund will give us, with a diminished inconvenience to the trader, and great benefit to the general consumer, about the same revenue as that which we have hitherto realised from the duty at its previous unequal rates. It is true that the present enhancement of the salt-duty in Madras and Bombay is calculated to give an increased revenue of £300,000. But, then, I must remind the Council that we have not imposed any other form of famine-taxation on the agricultural classes of those two Presidencies. I cannot too earnestly repeat that our main object in dealing with the salt-duties of Madras and Bombay has not been to obtain a larger revenue on the

whole than we could have obtained had we left those duties alone, but to facilitate and accelerate the completion of that great fiscal reform to which, under four successive Viceroyalties, the Supreme Government of this Empire has long been committed, quite irrespective of all financial exigencies occasioned by famine or other causes. The additional taxation which, on this ground, it was necessary to impose upon Southern India we have willingly accepted as a justification for exempting the agricultural classes in that part of India from the contribution exacted from the same classes in other parts of India on behalf of famine-expenditure.

"In earnest of our sincerity in affirming that our recent alterations of the salt-duty have been made, not for revenue, but for fiscal, purposes, I may again remind the Council that, by reducing the salt-duty in Bengal and in Northern India, we have sacrificed £200,000 worth of revenue. Nor should it be forgotten, I think, when we come to consider the practical incidence of the existing salt-duties upon the poorer portion of the population, that the extension of railway-communication has done much to cheapen the virtual price of salt to the people. For instance, the lines which now connect Bombay with Beypore and Madras, on the one side, and Jabalpur and Nágpur on the other, and those which connect Negapatam with Tuticorin, carry salt from the sea-coast to the interior at the rate of 1 anna per maund for about every 50 miles. Thus, the carriage of a maund of salt from Madras or Bombay to any intermediate railway-station does not now exceed 8 annas, which is considerably less than the old cost of carriage by road, and may be fairly reckoned, in favour of the consumer, against the corresponding increase of duty.

"Similarly, in the Bengal Presidency, the present railroads have placed a great part of the country in immediate communication with the sea-coast and internal salt-sources; so that, in spite of the continued imposition of comparatively high duties, the development of railway-communication has cheapened the price of salt over a great part of the country; and further reductions in the price of salt may consequently be expected from further progress in the development of railway-communication.

"But, sincerely as I desire to see the price of salt not only equalised, but cheapened, throughout India; earnestly as I hope that it may be the privilege of this administration to accelerate the arrival of the day when such a result may be attainable; still, I must frankly own that I feel unable to accept the dictum of those who assert that the present salt-duties are a grievous burden to the long-suffering back of the poor raiyat. It may be in the power of the Govern-

ment of India, and I hope, indeed, it may be in the power of the present Government of India, to lighten that burden such as it is; but it is my own belief that it will never be in the power of any Government of India to devise a substitute for it, which will weigh less heavily on the poorer classes, or be less sensibly felt by them. A salt-tax of rupees 2-8 per maund is a tax of less than three farthings per pound. It would be absurd to represent the pressure of such a tax as oppressive. The manner in which the tax is levied renders the pressure of it almost inappreciable. It is an indirect impost, distributed, in minute daily instalments, over vast masses of population; and, in all probability, the majority of the millions who pay it are not even conscious of its existence. It is the only obligatory tax imposed by this Government upon the masses; and the total amount of its proceeds, when compared with the numbers from whom it is collected, shows how small is the contribution of each individual.

"The gross estimated revenue of a salt-tax, assessed at rupees 2-8 per maund, is about 6 millions sterling; and this revenue would be collected from a population of not less than 200,000,000 of consumers. On this point, I shall again venture to quote the words of Sir William Muir. 'If,' he said, 'there were any form of indirect taxation which could be brought to bear upon the rich, rather than upon the poor, and on the luxuries, rather than on the necessaries, of life, I would at once agree to such a tax; but I know of none that is practicable.' And then, after dwelling on the dissatisfaction occasioned by all attempts to extract national revenue from the wealthier classes by direct taxes specially imposed on those classes, as compared with the ascertained social results of indirect taxation levied on a commodity which is consumed by rich and poor, and equally necessary for all classes in the community, Sir William Muir concludes by this emphatic record of his own experience: 'In the one case,' he says, 'we stir up angry feelings in every class throughout the country; in the other case, we peaceably realise what we require, without affecting the contentment and tranquillity of any class.'

"In quoting these words, I do not forget that it is no justification of a bad tax that it is borne without complaint, or even without being perceived, by those on whom it really falls. A poison may be fatal, administered in repeated doses, infinitesimally small. All that I desire to point out is, that, so far as objections might arise to the salt-tax on the ground of its being unpopular, as we well know it has been in other countries, such a reason for rejecting this form of taxation has no existence in India.

"I trust, then, I have shown that the recent action of the present Government of India, in reference to the salt-duties of Madras and Bombay, is in complete accordance with the consistent, continuous and repeatedly avowed aim of its predecessors during the last ten years and more. I trust I have shown that of the sincerity of its devotion to the prosecution of that aim the present Government of India has given conspicuous proof, by taking, for the attainment of it, bolder and wider steps than any which have been taken by previous administrations. I trust I have shown that these steps have been taken without deviation from the course prescribed to us by our predecessors. And, if I have succeeded in this endeavour, then I think I am entitled to claim from all who have questioned our policy, a complete acquittal from the charge that, in what we have done, we have sacrificed the interests of the poorer classes to those of the richer, with a view to a mere increase of revenue. The point at which we have now arrived is this. The salt-duty in Madras, Bombay, Sindh and the Central Provinces has been equalized at the rate of rupees 2-8 per maund. In the North-Western Provinces, Oudh, the Panjáb and Lower Bengal, it still varies between higher rates. The aim of the present Government will be to reduce those higher rates to the level already reached by the salt-duties of Southern India. Nor shall we relax our endeavours to cheapen the price of salt throughout the whole Empire by improving our means of communication with the sources of supply. I trust that our administration may last long enough to achieve these long-deferred results; and that my hon'ble friend, Sir John Strachey, may still be a Member of it when we attain the Promised Land to which he first guided our progress, and thus fulfil his eloquent prophecy of the day when the Government of India will have given to the people of India 'the means of obtaining, with the least possible inconvenience, and at the cheapest rate consistent with financial necessities, a supply of salt only limited by the people's capacity of consumption.' In the meanwhile, we must continue, I fear, though animated by hope and free from self-reproach, to adopt the motto suggested by some schoolmaster for the door of a grammar-school, and borrowed from that venerable authority, the Eton Latin Grammar—'*Præsens imperfectum, perfectum futurum.*' With the expression of this hope, I now beg to put the question moved by my hon'ble colleague."

The Motion was put and agreed to.

TRANSFER OF PROPERTY BILL.

The Hon'ble Mr. Stokes presented the Preliminary Report of the Select Committee on the Bill to define and amend the law relating to the Transfer of property.

FERRIES (PANJÁB, N.-W. P. AND OUDH) BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to regulate Ferries in the Panjáb, the North-Western Provinces and Oudh. He said that in the Panjáb, owing to the inadvertent repeal by Act IV of 1872 (the Panjáb Laws Act) of Bengal Regulation VI of 1819, there was now no law at all for the control of ferries. One result of the repeal was that everything done by the Magistrates for the last five years in the way of appointing persons to the charge of public ferries, regulating the rates of toll, the number and description of boats and so on, had been done without any warrant of law. Another result was that unlicensed persons might legally set up private rival ferries near ferries managed by Government, and thus materially reduce the income derived from the latter, and the funds available for keeping them in order. In the North-Western Provinces and Oudh, the Bengal Regulation VI of 1819 was still in force; but the Local Government had expressed a desire that it should be replaced by a measure better adapted to the requirements of the present time and the conditions of modern legislation. The Bill had been framed on the lines of the Burma Ferries Act, which this Council had passed in 1873, and which he believed was working well, but of course some modifications were necessary to adapt this measure to the circumstances of Northern India. He would, if the Council gave him leave to introduce the Bill, explain those changes on a future occasion.

The Motion was put and agreed to.

ARMS BILL.

The Hon'ble SIR EDWARD BAYLEY moved that the Hon'ble Mr. Thornton be added to the Select Committee on the Bill to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 13th February 1878.

CALCUTTA;
The 9th February 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The Meeting which was originally fixed for Wednesday, the 6th February 1878, was adjourned to Saturday, the 9th February 1878.

Government Central Press.—No. 691 L. D. 15-2-78.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 13th February, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, C.S.I.

His Excellency the Commander-in-Chief, G.C.B.

The Hon'ble Sir E. C. Bayley, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

The Hon'ble Sir J. Strachey, K.C.S.I.

Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán, Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

TREASURE-TROVE BILL.

The Hon'ble SIR EDWARD BAYLEY moved that the Report of the Select Committee on the Bill to amend the law relating to Treasure-trove be taken into consideration. He said that, as it was now some time since this Bill was first introduced into this Council, and as the form, though not the substance, of the Bill had been considerably altered since it first came under consideration, he thought it might perhaps be right, in asking the Council to take the report of the Select Committee into consideration, to say a few words to refresh their memory as regards the reasons for and the objects of the Bill. The reasons for the Bill—the reasons for which it was required—were simply that the law throughout the country was partly uncertain, partly diversified, and partly unworkable.

The old law, that is to say, the existing law, was founded upon the principle that all treasure-trove lapsed to, and became the property of, the State. That was a principle which was in theory perfectly defensible and was not to be

denied. But as a matter of fact, especially in India, it was impossible to enforce it, and the attempt to do so had only resulted in creating a series of offences which it was difficult to punish, which were also demoralising, and had also led to the destruction of many valuable articles in consequence of the temptations for concealing their discovery. The object of the present Bill was to make the law certain and to place it on a workable foundation. The principle which the Committee had followed was to secure in the first place the intimation of the finding of the treasure, to secure the rights of all persons who could establish an antecedent property in it; and only where no such antecedent right could be established, did the right to the property come to be dealt with under this law. When the property was declared to be without an antecedent owner, then the division of property in the article found was made between the finder and the owner of the place where it was found. The reason for giving this right to the owner of the soil was that, although perhaps it was not a right which could very easily be defended on principle, yet as a matter of fact such right was very largely asserted by persons who were owners of the soil, and the assertion of vague and antagonistic rights had given rise to many disputes and had also frequently led to the concealment of property found. It was therefore proposed to place the finder and the owner of the property in certain definite relations in regard to that property; and finally the Bill provided means whereby the Government would be able to procure for the national museum articles of historical or archæological value which it might be desirable to secure. Special provisions had been largely introduced into legislation in Europe for this purpose, and had the effect of preserving for national use much very valuable property and articles of great historical importance which would otherwise have been destroyed. He hoped that such might also be the result in India. But the Bill being one which was founded on a principle entirely new to India and intended for a state of society which was not exactly the same as that in Europe, might possibly be found practically to require amendment in its details. It was at present launched in the best form which we were able to give it, and he had no doubt that if experience showed that it required modification, the Council would so modify it.

The Motion was put and agreed to.

The Hon'ble SIR EDWARD BAYLEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Thornton be added to the Select Committee on the Bill to define and amend the law relating to the Transfer of Property.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 20th February 1878.

CALCUTTA;
The 13th February 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 734 L. D.—15-2-78.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 23rd February, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
The Hon'ble Sir J. Strachey, K.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble G. H. P. Evans.
The Hon'ble E. C. Morgan.
The Hon'ble F. R. Cockerell.

FERRIES (PANJÁB, NORTH-WESTERN PROVINCES AND OUDH) BILL.

The Hon'ble MR. STOKES introduced the Bill to regulate Ferries in the Panjáb, the North-Western Provinces and Oudh, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Andrew Clarke, the Hon'ble Messrs. Colvin and Thornton and the Mover. He said that he had already explained the circumstances under which the Local Governments of the Panjáb, the North-Western Provinces and Oudh considered legislation on the subject of Ferries to be necessary for the first of those Provinces and expedient for the others. The Bill which he now introduced was based upon the Burma Ferries Act, II of 1873, and the provisions of that Act had been followed as closely as the different circumstances and requirements of the Provinces with which this Bill dealt would permit.

Section 3 declared that the term 'ferry' included bridges of boats, as they often took the place of ferries in Northern India, and were managed in the same way as ferries properly so called.

There appeared to be no recognized private ferries in the Panjáb, but they existed in the North-Western Provinces and Oudh. A clause had therefore been introduced in section 4, in accordance with the wishes of the Lieutenant-Governor and Chief Commissioner, giving the Local Government power to take possession of private ferries and make them public; and section 5 prescribed the manner in which claims for compensation made by persons whose ferries were so taken by the Government were to be dealt with. This section followed the provisions of section 6 of Bengal Regulation VI of 1819.

Section 9 provided that arrears due by the lessee of a public ferry on account of his lease might be recovered as if they were arrears of land-revenue.

Section 13 provided that no person should use the approach to, or landing-place of, a public ferry without having paid the toll payable for crossing it.

By section 17 power was given to any person to compound for the tolls payable for the use of public ferries.

Sections 18 and 19 dealt with private ferries: the former empowered the Commissioner of the Division, with the previous sanction of the Local Government, to make rules for the maintenance of order and the safety of passengers and property: the latter declared that the tolls chargeable at such ferries should not exceed the highest rates fixed for similar public ferries.

The penalties generally had been increased in accordance with the wishes of the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Government Gazette, Panjáb*, and the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Governments direct.

The Motion was put and agreed to.

PANJÁB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Thornton be added to the Select Committee on the Bill to amend the Panjáb Laws Act, 1872.

The Motion was put and agreed to.

SEA CUSTOMS BILL.

The Hon'ble MR. HOPE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the levy of Sea Customs-duties.

INDIAN FOREST BILL.

The Hon'ble MR. HOPE also presented the final Report of the Select Committee on the Bill to amend the law relating to the management and preservation of Government forests, to the transit of forest-produce, and to the duty leviable on timber.

The Council adjourned to Wednesday, the 6th March 1878.

CALCUTTA,
The 23rd February 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 903 L. D.—1-3-78.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 6th March, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

The Hon'ble Sir E. C. Bayley, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble Sir J. Strachey, K.C.S.I.

Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. C. Paul.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

ARMS BILL.

The Hon'ble SIR EDWARD BAYLEY presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Arms, Ammunition and Military Stores. He said that as the Bill was one of considerable interest to the public, and as many objections had been made to it in the shape in which it originally stood, by persons of all classes, it might perhaps be advisable to give some sketch of the alterations which the Select Committee had introduced in the Bill with the view of meeting such of those objections as seemed to them valid.

One part of section 5 of the Bill as introduced required all persons, other than licensed vendors, selling arms or ammunition, to give notice in all cases to the officer in charge of the nearest Police-station. In the new Bill, this notice was now dispensed with where the purchaser was a person exempted under section 27, and it was further provided that notice, where still necessary, should be given to the Magistrate of the district instead of at the Police-station, which, especially in the case of transactions in which Europeans were concerned, might sometimes be more convenient to the parties. As he should have occasion to point out, another provision had been introduced, which, with practically very much less inconvenience and irritation to private parties, secured the

objects which it was intended to secure by these provisions of section 5, and they might therefore safely be omitted.

In respect to the duties imposed under section 7 of the Bill, very much comment had been elicited alike from the public Press, the Local Governments, and private persons. The objection commonly taken had been that these would press unfairly upon those who were loyal and well-disposed, and who were desirous to obtain arms, whether for sporting or other legitimate purposes, especially in those districts bordering upon forests or other places infested with wild beasts, and where fire-arms were required as a means of protection for themselves or against the destruction of their crops. Those objections were doubtless well founded, and to meet them the Committee had provided that when persons exempted or excused themselves imported any fire-arms or purchased them from the importers, they would be entitled to a drawback upon the duty specified in the schedule, which would bring it down to the level of the duty at present in force, and also would not exceed in any one case ten per cent. *ad valorem.* As a matter of fact, this alteration would produce a slight reduction in the duty now payable upon the higher classes of fire-arms. There was also a provision which was not entirely new, though new to this Bill. It was a section which was inserted with the object partly of drawing attention to the provisions of the Customs Act, and partly with the object of applying them in a slightly modified form to the importation of arms. That was to say, it permitted the conversion of the private shops or offices of an importing firm into bonding warehouses, in which they might store the arms imported, and pay duty upon them only as they were withdrawn for sale. This amendment was introduced to meet an objection which had been made—a legitimate one—by a large firm, that they would otherwise have to pay down on importation a large amount of duty, and, perhaps, it would be a long time before they got any return. This provision would meet that objection.

With regard also to the schedule of dutiable articles, some minor articles had, on reconsideration, been struck out of it, and with regard to all other articles which were the appendages of fire-arms, it was provided that, when they were imported and fitted in the same case as the fire-arms, they would be exempt from the payment of duty.

The next alteration to which SIR EDWARD BAYLEY would refer was that, while the draft Bill provided for importation by sea, it overlooked the possibility of importation by land. There were several foreign sea-ports on the coast, and this fact made it necessary to introduce provision for importation by land also, and therefore the clause which applied to importation by sea was made to apply also to importation by land.

There was another clause which was new, and which was the only point in which he thought the Select Committee had increased the rigidity of the Bill; but it had been inserted on the special recommendation of the Lieutenant-Governor of the Panjáb. The new clause empowered the Local Government, with the previous sanction of the Governor-General in Council, to appoint searching-places at certain points within our frontier, whenever there was a belief that arms or ammunition were likely to be exported over the frontier.

In section 11 of the Bill there was also a very material alteration. As introduced, the Bill prohibited the possession of arms of any description without a license. In that form it would have been an unnecessarily sweeping measure, and in fact, the form which the original Bill assumed in this respect was due perhaps to an oversight. Under the old law a difference was made, as he had explained before, between certain proclaimed and unproclaimed districts, and that difference was practically swept away by the draft Bill. The Committee had thought it right to restore that distinction so far, that in a district proclaimed the possession of *all* arms would need to be licensed, but in a district which was not proclaimed, licenses would only be required for the possession of fire-arms.

There was another difficulty in regard to the disposal of arms which were deposited under sections 11 and 14,—that was to say, arms which came properly into the possession of people, but in which the legal possession of them had ceased and which therefore came under the custody of the Police. It had been provided that they should remain for a year liable to be claimed by the owner in one case, and in another case, which was a more difficult one, for three years. If at the end of that time they were not claimed and legally dealt with, they would be forfeited.

There was another question which was a matter of greater difficulty, and the Committee were unanimous in opinion regarding it. It referred to the levy of fees for licenses to possess, but not for licenses to manufacture or import or transport. On the whole, considering the many difficulties which existed, it was considered advisable that the former class of licenses should be freed from taxation. It was a matter of some difficulty, because it somewhat affected the resources of the Local Governments, which had hitherto derived some revenue from this source. But he thought the arguments which convinced the Committee ought to prevail; the question, however, was one which was open to discussion hereafter.

There was another section also of some degree of stringency which was taken from the Code of Criminal Procedure. Section 28 required information to be given by any person who had a knowledge of any offence committed

against the provisions of the proposed Act. A clause to that effect existed in the Criminal Procedure Code, in regard to many offences of a nature parallel to those punishable under this Act, and all that had been done was practically to apply that section to the present law.

Then in section 32 came another new provision, which was intended to take the place of that in section 5 of the draft Bill, which required notices to be given at the Police-office by persons selling arms. The real object of this provision was to enable the Government to know where arms were held, and to detect whether they had been legally imported or otherwise. All that was intended was that persons who possessed arms should be held liable to fill up returns when required to do so. The Committee did not think that that was an unnecessary interference with private convenience; it was a form of enquiry which would give very little trouble, would not be frequently resorted to, and which might be of great use.

Beyond these, there were some minor alterations in the details of the Bill. But they were almost all purely matters of drafting, intended to bring the provisions of the Code into harmony with other enactments, and to make its meaning clear.

Under these circumstances, as almost all the changes which had been made, although of some importance, were in the interests of the public and in the direction of relaxing the stringency of the Bill, the Committee did not consider that it need be republished as altered by them.

INDIAN FOREST BILL.

The Hon'ble MR. HOPE moved that the Reports of the Select Committee on the Bill to amend the law relating to the management and preservation of Government forests, to the transit of forest-produce, and to the duty leviable on timber be taken into consideration. He said: "On introducing this Bill above a year ago, I explained the necessity for a new law, but some further exposition may not be out of place. Act VII of 1865, which is the present law, is framed upon the basis that the Government may make into a 'Government forest' any jungly land it pleases, provided that its selection does not abridge or affect any existing rights of individuals or communities. Consequently, if in any instance it was found necessary for Forest purposes to acquire any private land or rights, the Government was left to do so by means of the ordinary law for the acquisition of land for public purposes. Act VII of 1865 was almost immediately found to be more or less unsuitable for the purposes in view, and the Governments of Madras and Bombay have, in consequence, never availed themselves of the power of extending it to their territories which it conferred upon them.

"In October, 1868, the draft of a new Act, and a memorandum explaining very clearly the defects of the present one, were laid before the Government of India by Mr. Brandis. I am well aware that Mr. Brandis has a reputation quite independent of any praise of mine, but I feel constrained not to allow this occasion to pass without recording, that to his vast knowledge of forest matters, to his sound discretion and his unfailing energy, British India is chiefly indebted for the very great progress in forest conservation which has been made in all the Provinces more directly under the Government of India during the fourteen years for which he has held the office of Inspector-General of Forests. I will now briefly describe the chief deficiencies of Act VII of 1865. It drew no distinction between the forests which required to be closely reserved, even at the cost of more or less interference with private rights, and those which merely needed general control to prevent improvident working. It also provided no procedure for inquiring into and settling the rights which it so vaguely saved, and gave no powers for regulating the exercise of such rights without appropriating them. It obliged you, in short, either to take entirely, or to let alone entirely. On control over private forests in the general interest of the community, it was absolutely silent. For duties on timber, even those actually levied, it gave no authority. Protection for Government forests so interlaced with private ones as to be in chronic danger of plunder, there was none. In various minor points also it was deficient.

"The draft and memorandum by Mr. Brandis, to which I have alluded, set rolling the stone of discussion which is in motion up to the present day. Since then we have had drafts and counter-drafts, reports and memoranda innumerable; we have had two forest conferences, at one of which were present representatives of the Forest Department from all parts of India, and the proceedings of both of which have been printed; and, finally, we have the present Bill, which has been under active consideration for nearly two years, and has been twice reported on, in its successive stages, by all the Local Governments and their more experienced officers. Meanwhile, during these ten years, the Provinces have been getting on as best they could, some under the existing Act, others under no Act at all. In some parts the people have been suffering through encroachment by Forest Officers on their ill-defined rights, in others the community at large have been suffering by progressive denudation of forest-lands. In some Provinces where the Act is in force, there is a singular confusion of rules, imperfect rules, Regulations, and no rules, of which I gave the Panjáb as an illustration on the last occasion when I had the honour of addressing the Council on this Bill. And all the while we have been struggling on as best we could to meet the real wants and necessities of the

case. We have been demarcating reserves, constituting district forests and endeavouring to protect them, enquiring into rights, and recording, buying up, continuing or commuting them. In fact, we have got an existing state of things totally at variance with the existing law.

"The case for legislation, therefore, whether for the Provinces with a bad law, or the Provinces with no law, is, I submit, complete. Whatever may be the faults of the present measure, it cannot be said that we have been proceeding otherwise than cautiously and gradually. If, after spending ten years in finding out what we want, we proceed to supply it, we cannot be accused of hasty legislation. In proof that we were well supplying it I quoted, when presenting our last report, the terms of approval with which Bill No. I had been received by all the Local Governments except Madras. I am glad to say that this approval has been generally repeated in the case of Bill No. II. I may quote a few instances. Of the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, we hear that the Bill 'seems to His Honour to be very complete.' The Lieutenant-Governor of Bengal, while 'generally accepting the provisions of the Bill,' makes a few minor suggestions. From Bombay we learn that 'the Indian Forest Bill as it now stands seems to this Government a very good one, and the Report of the Select Committee covers all that is necessary.' The Chief Commissioner of the Central Provinces 'cordially approves of the Bill, as calculated to meet a long-felt want: he will be very glad when it becomes law and he is able to apply it to these Provinces.' But the Local Governments generally have done more than approve. Nine out of eleven of them have expressed their desire that the first section of the Bill should be altered, so that the Act might apply directly to their Provinces, and the trouble and delay of separate extensions might be thus avoided. The two dissentients were Ajmer and Madras. The Chief Commissioner of Ajmer pointed out, and with reason, that as there were as yet scarcely any standing forests in Ajmer, and they were only attempting to grow them, the simple Regulation passed three years ago under 33 Vict., cap. 3, would answer all purposes for some years to come. The Madras Government objected to the revised Bill on much the same grounds as those on which they objected to the original one. They considered it unsuited to the circumstances of Southern India, and preferred legislating locally—which it is of course open to them to do. In consequence of these representations, the Bill is now, by section 1, made directly applicable to Bombay, Lower Bengal, the North-Western Provinces, the Panjáb (except the Hazára district), Oudh, the Central Provinces and Assam. The same course has not been followed, the Council will observe, in the case of Coorg and British

Burma, though the Chief Commissioners of both desired it. Coorg, it was thought, ought to have the same law as Madras, whatever that might be, and for British Burma the Executive Department of the Government of India considered it best to leave the extension to be made hereafter by a separate notification. Ajmer, Coorg, British Burma and Madras will therefore remain, as in the Bill when introduced, in this position, that the Local Government possesses the initiative and may apply the Act or not, as it thinks proper, subject, in the former case only, to the sanction of the Governor General in Council. I may remark, with special reference to Madras, that this position is practically identical with that which it now holds with regard to Act VII of 1865. I would here only add that I trust that sanction to apply the Act to British Burma will be at once applied for. It has been ascertained by exhaustive analysis that there is not a single local peculiarity which the Bill does not sufficiently provide for. The Chief Commissioner has asked for the direct application of the Act, and formally reported that he considers any separate Act for British Burma quite unnecessary, while officers well acquainted with Burma, in whose opinion I place the utmost confidence, assure me that its effect will be most beneficial, and that it will much accelerate the progress of demarcation and conservancy.

"Having thus explained the scope and application of the Bill, I will mention a few material changes last made in it by the Select Committee. First, in order to prevent any inconvenience arising from the direct application to certain Provinces, we have added a clause to section 1, validating all existing rules so far as they are not inconsistent with the Act. At the same time, the majority of such rules are in one way or another incomplete, incongruous, superfluous, or *ultra vires*. I trust that the Local Governments will lose no time in exercising the power the Act will afford, of replacing them by clear and full rules in correct relation to the several chapters. Again, we have made a slight alteration in the terms of the restriction in section 4, as to who may be appointed Forest-settlement Officer, in order to meet a technical clashing with the definition of 'Forest Officer' in section 2. But we still fully mean to indicate the desire of the Legislature that the post of Forest-settlement Officer should never, except possibly under some very extraordinary circumstances, be held by a member of the Forest Department.

"A third important change is in section 22 of Bill No. II, which has been recast and appears as section 34 of Bill No. III. The intention of section 22 of course was, that forests which are now so closely reserved as to be subject to restrictions practically, if not precisely, such as a forest might be which was reserved for the first time by enquiry under the new Act, should be consti-

tuted reserves under the latter. And provision against any injustice in individual cases was made by the second clause of the section, allowing enquiry into unadjudicated claims. It has, however, been pointed out that this intention is not expressed with sufficient clearness, and that as the term 'reserved' has hitherto been very loosely used, and applied to forests with very varying degrees of restriction, it would be possible to take advantage of it, so as without inquiry, and in violation of existing agreements or settlements, to convert what were really mere 'protected' forests into highly restricted reserves under the new Act. The feasibility of such action has been specially represented with regard to certain forests in Kumáon, which are officially styled 'reserves,' but in which the people enjoy, under very formal and clear engagements or guarantees, rights of a very extensive character. I need scarcely say that I should consider any such course of proceeding to be grossly inequitable and a complete perversion of the intention of the Act. I find it hard to believe that any local officers, of whatever department, could be found to recommend such confiscation, or that any Local Government would sanction it if recommended; still, as the doubt has been raised, it is better to remove it, and this is done effectually by the new section 34.

"The concluding terms of section 34, providing that, pending any enquiry which may be necessary, the declaration of a forest as 'reserved' or 'protected' shall not affect the rights under enquiry, is analogous in principle to a new clause which we have inserted in section 29 (now 28), the origin of which I will now explain. The section provides that a protected forest shall not be constituted unless the rights of Government and private individuals have been inquired into and settled in a sufficient manner. The Chief Commissioner of British Burma pointed out that the area, in that Province, of forest-lands which had not yet been examined with reference to their capabilities for becoming either reserved or protected forest, and in which no enquiry and settlement of rights of any kind had taken place, was so vast that many years would be consumed in the process, and that in the meantime the forests would be unprotected and might be seriously injured. As there appeared to be good grounds for his apprehension, we have provided that, when such a state of things is found, the Local Government may declare the forests 'protected' previous to enquiry, and that during such enquiry the declaration shall not affect existing rights of individuals or communities. In other words, we have kept alive temporarily, pending enquiry and settlement, the old provision of Act VII of 1865. I must, however, say that I rely upon no advantage being taken of this clause to postpone due enquiry and settlement one day longer than is necessary. The old basis may have been very well for 1865, or rather for a time when

forestry was so much in its infancy that we did not understand the position; it may then have been the only basis practicable. But I feel no doubt that a condition of affairs under which a man may be brought before a Magistrate for any act done in a forest, and have laid on him the burden of proving then and there that he did it in exercise of a right, is a condition fit only for an uncivilised country and Government, and quite undeserving of permanent recognition. Some parties, I see, look on this old saving clause as if it were a protection, but I consider it to be quite the reverse. The only safe ultimate condition is one where all parties know and respect each other's rights.

"I will now offer, in conclusion, some remarks on the general principles of the Bill. When introducing to the Council the Bill which became Act VII of 1865, Sir Henry Maine stated that it was the desire of Government not to affect or abridge petty rights over the soil or produce of forests which had been prescriptively acquired by individuals, villages or wandering tribes. This desire, speaking generally, still continues, and there is abundant evidence of it in the present Bill. But experience has shewn that it is not possible to avoid some interference with rights in certain cases, and that it is better for all parties that rights should be defined, whether they are interfered with or not. I will endeavour to illustrate this. There can be no real forest-conservancy in any country without a certain proportion of close reserves, and no such reserves can be maintained if all sorts of rights are to be freely exercised inside them. Expropriation is consequently indispensable, though to a greater or less extent according to the circumstances of each forest. But the Bill provides for expropriation a machinery and procedure far more lenient than the ordinary Land Acquisition Act of 1870. It provides, in the first place, for enquiry and settlement being effected by an officer free from any departmental bias adverse to the people; it lays upon that officer the duty of seeking out, from the records of Government and the evidence of individuals, rights which the people themselves may be too ignorant or too apathetic to claim; it locates the enquiry in the vicinity of the forest, to ensure all claimants being aware of it; it admits free appeal, and that to officers who will, in large portions of India, be personally identical with the Civil Courts; it superimposes the revising power of Government; and, finally, it allows of compensation being given in kind instead of in money, by the setting out of land in lieu, or otherwise.

"Again, there exists throughout India a vast mass of forests which are not reserves, and for the most part never can be; in some cases, because they are not good enough, but mostly because they have other purposes to fulfil, and are needed for the current use of the people. There is an idea in some quarters that the forma-

tion of strict and close reserves is the Alpha and Omega of forest-conservancy. This idea I believe to be mistaken. If our sole object were revenue, it might be otherwise. But revenue is not, and I trust never will be, either our sole or our principal object. Our aim is, I take it, the preservation of forests of all classes throughout India for climatic reasons and the supply of the varied needs of the people. To maintain the forests, on which the population at large depend for the grazing of their cattle, the thatching, repair and construction of their houses, and even (in some cases) the fertilization of their fields, and the eking out of their slender meal, and to ensure, with this view, the provident and reasonable exercise of rights the existence of which is not disputed, appears to be as essential a part of forest-conservancy as the formation of reserves, and the nursing of gigantic teak trees. But by the present Bill we contemplate no such regulation until the rights themselves have been sufficiently defined. I say 'sufficiently,' because it will be seen that the enquiry contemplated in the case of protected forests is not of that minute kind which is necessary in the case of expropriation, but corresponds with that usual throughout India at a survey or settlement, where the record is only presumed to be true till the contrary is proved.

"A third case I would refer to is that of private forests, with which, for reasons which are, in the interest of the community at large, considered valid in European countries, some interference is indispensable. These reasons, which are such as protection from rolling stones, avalanches and landslips, and the maintenance of water-supply, will be found detailed in section 36 of the Bill. The cases where the powers will be exercised will, I believe, be rare, and principally in districts of the Himalayas. But where they are, we desire to avoid, if possible, depriving the owner of his property: we ensure to him the nett profits of it while under Government management, but reserve to him the right of demanding that Government shall purchase it. Finally, we extend regulations regarding the control of timber in transit (to be applied only where necessary) which have worked well in Burma, and are quite as protective of the interests of private timber-owners and merchants as they are of those of Government. I may here mention incidentally that I have studied with much care the petitions against the Bill which have been received from the Bombay Presidency. They are entirely directed against Bill No. I, which was four months ago modified very materially in favour of the people. I believe that if any dispassionate persons will study the Bill and the explanation of it which I am offering, they will come to the conclusion that it will not unjustly or unreasonably affect any of the legitimate rights and interests of the petitioners. That it will put a stop to the systematic plunder of Government

forests, which has for years gone on in Western India, is very probable, and much to be desired.

"Our general principle, therefore, is very plain; forest-conservancy cannot go on without our, in some cases, taking something. But we take as little as we can, no more than is necessary for the purpose, and that little we pay for in one form or another. Moreover, we fence our action round with a knowledge of other people's rights and of our own. I submit that this is a policy clear, reasonable, in harmony with European legislation, and that it is the only policy compatible with the true interest of the community at large. There are, of course, persons who advocate an opposite theory of forest-conservancy. I see it stated in one of the papers laid before the Council that 'The acquisition and management under Government of increased areas means increased establishment and increased cost, without adequate return, increased apathy, increased ignorance among the people on the very points on which increased energy and the extensive knowledge only to be acquired by experience, is essential.' The holders of such opinions would retain, indeed, any reserves which Government actually possesses, but would not extend them. It would suffice, they think, that 'every means should be taken to enhance and secure to zamíndárs the full benefit of all their forest-produce and of their planted lands. To induce them to conserve that which has only a future value, their tenure should be assured rather than made more doubtful; they should be encouraged to utilise their tracts of waste as a sure property. * * * Village-communities should, in the same way, be encouraged to preserve and improve their own customary forests or jungles by reaping to their village benefits therefrom.' In short, if you want the forests preserved, only let the people alone, and they will do it. With any such theory I fundamentally join issue. From all that I have read and heard; from all that I have seen during a not inconsiderable experience of forest-administration, I believe such a theory to be a delusion, and a most mischievous one. Whatever you do, do as leniently as possible; do equitably, and only as far as is well shewn to be necessary in each case, but act you must, if you are to save what is left of the once vast forests of India, to check deterioration of climate, and to diminish risks of famine. Under any system of *laisser faire* you are only fiddling, while Rome, or your forest, is burning. The effects of such a system under Native Governments, and during the earlier years of our own rule, are written in broad letters upon a thousand hills, and nowhere are they written more plainly, if we may trust that evidence of one of our most distinguished administrators which I read to the Council when presenting Bill No. II, than upon the uplands of Southern India. Surely it behoves us, in this our day, to do what we can to prevent additions to the melancholy record.

The final issue, then, is simple. If the Council prefer the principle of the Bill to any such theory, then I submit that the details are well calculated to carry out that principle. The Bill is, doubtless, not perfect; but I am not aware that absolute perfection is expected in this or any other branch of legislation. The Bill has been long and carefully considered; it is as good as it is likely to be with our present knowledge and experience, and as such I offer it for the acceptance of the Council."

The Hon'ble SIR J. STRACHEY said:—"MY LORD, I agree so completely with all that my hon'ble friend Mr. Hope has said in regard to the principles on which this Bill is framed, and I think the Bill generally so good, that I do not wish to discuss it at any length.

"There is one point only on which, for special reasons, I wish to make a few remarks.

"Special reference was made by Mr. Hope to the changes which have been made in what is now section 34 of the Bill, and he stated that it affected in particular certain forests in Kumáon in the North-Western Provinces. Having been myself in past times interested, in various official capacities, in the forest-tract in question, I wish to say a few words on the same subject, with the view of giving further emphasis to my hon'ble friend's explanation.

"Although my hon'ble friend may very possibly, with his greater knowledge of this Bill, have been right in his belief that the section as it formerly stood would not have had any mischievous effects if it had been passed into law, I was one of those who looked upon that section with extreme distrust. It declared that every forest constituted a reserved forest previous to the date on which the Act came into force should be deemed to have been constituted a reserved forest under this Act.

"If the term 'reserved forest' had signified up to the present time a reserved forest in the same sense in which that term is used in the Bill, such a provision would have been quite reasonable. The term 'reserved forest' has, however, up to the present time had no definite meaning at all. In some parts of the country it has signified a close forest strictly preserved as the property of Government, and in which no private rights exist. In other cases the term has been applied to forests which hardly deserve the name, where the rights of the Government are comparatively unimportant, and where the people have from time immemorial been in the enjoyment of large and admitted rights. Under such circumstances, it seems to me that it was impossible to declare with propriety that there should be applied to all forests hitherto called reserved

forests the very serious conditions which are applicable to reserved forests constituted under this Act. The future position of a forest, and the nature of the rights to be exercised in it by the Government and by private individuals or communities, might have depended on the accident of the name by which the forest had been designated at a time when that name had no definite signification. It is true that there was a proviso to the section as it stood, which was intended to protect existing private rights, and my hon'ble friend may be correct in his belief that all necessary protection would thus have been afforded. I cannot say that this is my own opinion.

"In spite of this proviso, I fear that we should have found that serious injustice might have followed. However this may be, I think it highly desirable to remove all doubts, and I think this will be done in a satisfactory way by the section as now amended. The responsibility will then be placed on the Local Governments of determining, after careful consideration of each particular case, what forests are actually in the position of reserved or protected forests in the meaning of those terms as they are used in the Act. With the provisoes by which the new section is guarded, it will be made clear that it is not the intention of the Legislature to make by this section any change in the respective positions held by the State or by individuals in any forest, but that all existing rights shall remain unaltered.

"I am, with my hon'ble friend, sure that this section will be applied by the Local Government in a manner which will lead to no injustice.

"I feel, however, that great care will be necessary, and there are special reasons in Northern India, of which alone I have any personal knowledge, which render such care peculiarly important.

"In Northern India the position held by the Forest Department is less satisfactory than that which it holds in the Bombay Presidency, with which my hon'ble friend who has charge of this Bill is so well acquainted. Instead of being, as I think it ought always to be, intimately connected with the regular administration of the country, the Forest Department is in a great measure a thing apart. The District Revenue Authorities who know the people best—who are, I may say, the natural guardians of the people's rights, and who possess at the same time an influence which gives them the best possible means of protecting the interests of the Government—have practically little or no voice in the management of the Forest Department.

"The Forest Officer ought, in my opinion, to be an expert, performing his duties under the control of the Revenue Authorities of the district. He ought not to exercise, independently of such control, powers which may sometimes

seriously affect private rights and interests, the protection of which may be more important than the protection of the forests themselves. In my opinion—and I speak as an ex-Lieutenant Governor who has had some experience of the matter—the present state of things is not in this respect satisfactory, and its existence will render it necessary to exercise peculiar care in the application of this section.

"These, of course, are questions with which the Executive Government, and not this Council, has to deal; but I think it right to notice them prominently, because the failure or success of this important measure will depend on the manner in which practical effect is given to its provisions. No man can recognize more fully than I do the extreme value of the work which the Forest Department has been performing under its admirable chief, Mr. Brandis, regarding whom I need only say that I heartily concur in every word that Mr. Hope has said in his praise.

"It is precisely because I feel so strongly the value of the Forest Department that I desire to see the system under which it works made to fit as completely as possible into the ordinary administration of the country. I will only add further that I am satisfied that this Bill is a very good one. I believe it will supply a want which has been very seriously felt, and that it will not only give increased protection to a most valuable source of the national wealth, but that it will also afford better protection to the rights of private individuals and communities. I think that the thanks of Government and the public are due to my hon'ble friend Mr. Hope for the care and ability which he has devoted to this Bill."

The Hon'ble SIR ANDREW CLARKE said that he came to the Council that morning prepared to support this Bill. But after the remarks which had fallen from his hon'ble colleague Sir John Strachey, he must say that he did not feel himself in a position to give his silent adhesion to it. It appeared to him that the Council were asked to pass an instrument which was to be put into the hands of the Government and to be worked by an agency in which the Government itself had no confidence, and he therefore felt himself constrained to oppose the passing of a measure which involved so serious a risk. He must say, also, that in some of the earlier remarks which had been made by the hon'ble mover of the Bill, there appeared to be more of excuse offered for the Bill than of justification of the measure. From those remarks he inferred that the Bill involved the extinction of a large number of private rights, and the observations which had been made by Sir John Strachey seemed to confirm that view. SIR ANDREW CLARKE therefore thought it desirable,

after what had passed, that the Bill should be referred back to the Select Committee, and that his hon'ble colleague Sir John Strachey should be added to the Committee, in order that there might be introduced into the Bill such measures as were found necessary to provide against the dangers to which the working of the Bill seemed likely to lead; and he also thought that measures of executive reform should also be considered by the Government in reference to the Forest Department. As he had said before, he had been taken by surprise, and after what had fallen from his hon'ble colleague, unless some satisfactory explanation could be given (which he had no doubt could be done), he certainly could not silently give his adherence to the passing of this Bill.

His Excellency THE PRESIDENT said his hon'ble colleague Sir Andrew Clarke appeared to him to have very considerably misunderstood the observations both of his hon'ble friend Mr. Hope and of his hon'ble colleague who had last spoken. But he wished to point out that Sir Andrew Clarke had placed the Council in this embarrassment—that he had made observations which had no reference to the motion which was now before the Council, and was not included in the motion itself.

The Hon'ble SIR ANDREW CLARKE observed that he was asked to pass a measure in reference to the practical working of which a member of this Council of great experience had expressed serious misgivings, and being thus taken by surprise, he felt himself bound to say that he was not prepared to allow the Bill to pass into law with a silent vote.

The Hon'ble SIR JOHN STRACHEY said :—"My Lord, I ask Your Excellency's permission to say a very few words in explanation, in reply to the remarks which have fallen from my hon'ble friend Sir A. Clarke.

"I fear that I must have expressed my opinions very badly, for my hon'ble friend has entirely misunderstood what I intended to say. I have thrown no reflections whatever on the Forest Department; on the other hand, I have expressed my sense of its extreme value. Nor have I said a word to show that I think that this Bill when passed into law will lead to the infringement of private rights. On the other hand, I have said that I believe it will give better protection to those rights than that which now exists. It will certainly take away no protection that the law now affords. There is nothing in anything which I have said which can justify the opinion that the Bill ought not to be passed."

The Hon'ble SIR ANDREW CLARKE remarked that his hon'ble friend had misunderstood him. The difficulty that he felt, after having heard his hon'ble

friend's observations, was as to the agency by which the measure must be worked: he did not see how the Bill was going to be worked in a satisfactory manner by an agency such as that to which his hon'ble friend alluded.

The Hon'ble SIR ALEXANDER ARBUTHNOT said he wished to say a few words upon the discussion which had just taken place. He gathered from the tenour of the remarks made by Sir John Strachey that his comments referred exclusively to circumstances which he considered to be unsatisfactory in regard to the relations between the special Forest Department and the ordinary administrative authorities of the districts in the part of India in which he had served. Sir John Strachey remarked that in the Presidency of Bombay the case was different; that there, the officers of the Forest Department were more closely in connection with, and SIR ALEXANDER ARBUTHNOT might add that they were, as he understood the matter, employed more in subordination to, the Revenue Collectors in charge of the Bombay Districts. It so happened that just before he left the Madras Presidency, one of the last acts of the Government there was to recommend, and if he remembered rightly to order, that a similar system (and he was not sure that they did not go a step further than the Bombay Government had gone) should be adopted in the Madras Presidency. On that occasion the designation of the head of the Forest Department was changed from that of Conservator of Forests to Inspector of Forests, and the district Forest Officers were made practically, and also by designation—he forgot the exact nomenclature—Forest Assistants to the Collectors of districts. A few years ago (the exact date he could not now call to mind) that system was altered: it did not find favour with the Government of India, as then composed, nor was it approved by the Home Authorities; and accordingly the head of the Forest Department in Madras had been again given the designation of Conservator, and he feared that to some extent the separation which formerly existed between the Forest Department and the Collectors of districts had been revived. He entirely adhered to the views he had held as a member of the Council in Madras, and he concurred in the observations which had been made by Sir John Strachey, as to the expediency of bringing the two authorities into very close connection, and practically of placing the officers of the Forest Department in subordination to Collectors of districts. He had not had the same advantages that Sir John Strachey had had, of practically observing the working of the Forest Department in Northern India, but a great deal of correspondence with reference to the management of the Forests in that part of India, which was one of the Departments under his charge, had come before him. He had had many opportunities of discussing such questions with the Inspector General of Forests

under the Government of India, and his impression had been that of late years the object of the head of the Forest Department and of the Local Governments had been to bring the Conservators of Forests much more closely than they used to be, under the orders and under the influence of the local authorities. He thought that, as the late head of a Local Government, Sir John Strachey would confirm him in the statement he was about to make, that in the North-Western Provinces and in the Panjáb and in this Province of Bengal, the Conservator of Forests was completely under the orders of the head of the Local Government, though possibly his subordinates were not so much under the orders and influence of local district officers as they might be. It was a question of very great importance. He thought it was very desirable that it should be fully discussed and fully considered, and he was not sorry that his hon'ble friend Sir Andrew Clarke had raised the discussion; for the question was one which certainly ought to receive the careful attention and consideration of the Executive Government. The question, however, was not free from difficulties. As he had just said, it was the unanimous opinion of Lord Napier's Government, that such a policy as that which Sir John Strachey advocated, should be adopted in Madras. But since Lord Napier left Madras, the Madras Government had in some measure retrograded from the policy to which he had alluded, and he had no doubt from what he had seen in the correspondence that various practical difficulties had been experienced. As to the principle of the matter, he entirely agreed with his hon'ble friend Sir John Strachey, and, as he had said before, he thought that every effort should be made to carry out that principle with as little delay as possible. But it did not seem to him that such delay as there might be in assimilating the management of forests in other parts of India to the system which obtained in Bombay, and which he believed was in many respects a better system than that which existed in the other Presidencies, need deter the Council from proceeding with the passing of the Bill.

As his hon'ble friend Mr. Hope had explained, and explained very clearly, and as SIR ALEXANDER ARBUTHNOT thought was clear from a perusal of the somewhat voluminous papers which had been received from various Local Governments, this Bill did not impose any restrictions on private rights and privileges which were not absolutely essential to efficient conservancy. As, moreover, Sir John Strachey had pointed out, and as Mr. Hope had also remarked, in some respects the Bill gave greater security to the exercise of those rights and of those privileges than was contained in the existing law. For these reasons he thought that it would be a mistake, after the length of time which had been occupied in the discussion and in the consideration of this

very important question, that the Council should now pause and hold their hands on the eve of passing the Bill. It was a Bill of very great importance; it was a measure which, as Sir John Strachey had said, not only in the North-West, but in Bombay and in every province of India, would require very careful watching on the part of the Executive Government. That was a remark which might be made with reference to almost every legislative enactment of any importance passed by the Council; but because it was necessary that the Executive Government should carefully watch and pay close attention to the execution of measures which were resolved upon by the Legislature after full discussion and very deliberate and careful consideration, he did not think that was a reason for postponing legislation *sine die*. Mr. Hope had pointed out that the Bill had been accepted by every local administration in British India except two: one was a very unimportant small province, the small British district of Ajmer, which was in a very exceptional position, surrounded by Native territory; the other was the very much more important Presidency of Madras. It so happened that the Presidency of Madras was the Presidency in which forest-administration was commenced before it was commenced in any other part of India; and it was a Presidency in which, as the Council were aware, a system of tenures prevailed which brought the local officers into very close contact with the people. It was a Presidency in which the feelings and sentiments of the local authorities, from the lowest executive authorities to the highest, had led them to view with perhaps undue suspicion any measures which might in any respect or any degree tend to trench upon the privileges or prejudices of the people. Now, he was one of those who thought—and he had been bred, he might say, in the same school as that to which he had been referring—that very great attention and very great respect should be paid to sentiments and feelings of that description. He believed it was a very good thing in all their legislative measures, that those sentiments should be brought prominently before them, and that they should be compelled to consider, and to pause in the consideration of, their measures with the view of seeing whether in any way they were unduly restricting what had been admitted, even erroneously, to be the rights and privileges of the people, and unduly conflicting with their long-cherished prejudices. But if they were uniformly to yield to those feelings and sentiments, when, after the fullest consideration, they had determined to adopt a certain course of procedure on behalf of the general interests of the community; if by reason of a change of circumstances, the march of civilization, changes in the climate, and many other reasons which he might specify, they found that it was for the general good of the community that so-called rights and privileges should be in some measure curtailed, unless they were prepared to abandon all adminis-

trative progress; that even for the material good of the country, for the mitigation of suffering, for the purpose of preventing the desolation of famines, for the purpose of maintaining the fuel-supply from the destruction in which it might otherwise be involved by the extension of Railways and other causes,—then he thought it would not be the part of wisdom—in fact, in his opinion it would be the part of folly—to be deterred from doing that which they considered to be expedient, and that which, after full and careful consideration, they deemed to be right. As regarded the Madras Presidency, this question of Forest legislation had received a great deal of consideration, not only from the Government of India, but from the Secretary of State. In a despatch which the latter authority wrote in 1871—nearly six and a half years ago—he (SIR ALEXANDER ARBUTHNOT) found it stated that—

"Of late years sound principles of conservancy had not made the progress which they should have done from the earlier start which they had here (in Madras) over the rest of India."

And in the same paper the Secretary of State went on to say—

"But the chief remedy for all these difficulties in the way of sound conservancy will probably be found in the demarcation of forests, and the introduction of an Act conferring the necessary legislative powers."

For some time past, the Madras Government had had under consideration the necessity for local legislation in this matter; and SIR ALEXANDER ARBUTHNOT was aware that they had a Bill before them which had not yet been introduced, but which had been framed by a Committee appointed for the purpose some two or three years ago, and which would possibly eventually become law. Mr. Hope had pointed out that the Bill before the Council had not been made directly applicable to the Presidency of Madras. Under the circumstances, SIR ALEXANDER ARBUTHNOT thought that, in making that recommendation, the Select Committee had exercised a wise discretion, and he would only add that, as the Bill stood, it *could not* be made applicable to that Presidency without the consent of the Local Government. What he had just said with reference to the Presidency of Madras, and the position in which the question of Forest legislation for that Presidency stood, was perhaps a digression. Returning to the point at which the discussion had commenced, he would again observe that however desirable it might be to improve the agency and the system of Forest administration, that was, in his opinion, not a valid reason for postponing the passing of this Bill.

He had only one further remark to make, and this was with reference to some of the observations which fell from his hon'ble friend Mr. Hope regarding British Burma at the beginning of his speech. He gathered from what had

fallen from Mr. Hope, and he was aware from what had passed in Committee, that this was the view taken by his hon'ble friend, that inasmuch as the Chief Commissioner had assented to the Bill being directly applied to British Burma, it was to be regretted that it had not been so applied. He might be permitted to explain that, as representing the Department of the Executive Government which dealt with Forests, he (SIR ALEXANDER ARBUTHNOT) had opposed the Bill being made directly applicable to Burma, in consequence of doubts very recently expressed by the Inspector-General of Forests, Mr. Brandis, as to the expediency of that measure. Mr. Brandis's views on such a question were entitled to the greatest consideration. He had been the first Conservator of Forests in Burma, and was probably better acquainted with forest-conservancy in Burma than any other person. Mr. Brandis had recently expressed doubts as to whether the Bill was suited to the peculiar circumstances of Burma, and had urged that the question of Forest legislation for that Province should receive further consideration. Under these circumstances, it appeared to SIR ALEXANDER ARBUTHNOT,—and he thought that would be the view of the Council,—that the safest and wisest course was to abandon the idea of directly applying the Bill to Burma, and to leave it to the Executive Government, in communication with the Chief Commissioner and Inspector-General of Forests, to decide that question afterwards.

His Excellency THE PRESIDENT said: "Before putting the motion which I now hold in my hand, I should like to say a few words. I desire to state, on my own behalf, that I appreciate most fully the importance attached by my hon'ble colleagues Sir John Strachey and Sir Alexander Arbuthnot, to the principle of bringing the various conservancy officers in the different localities in which they are employed, more directly under the control of the local officers. I fully share the opinion expressed by my hon'ble friend Sir Alexander Arbuthnot, in the course of what, I must say, appear to me his very statesmanlike remarks on this Bill, that it was not undesirable that that question should have been alluded to in the course of our discussions to-day. It appears to me, however, self-evident, that this is a question which concerns the consideration of the Executive Government, rather than of this Council, whose functions are purely legislative. The further discussion of the matter in this Council can lead to no practical result; and besides it must be borne in mind that the Government, which, perhaps of all others, is most interested in the practical application of the principle referred to by my hon'ble friend Sir John Strachey; namely, the Government of the North-Western Provinces, is one of the Governments which have not only approved of this Bill, but have applied for its direct and immediate application. I think therefore we should

not be justified in wasting the result of ten years' deliberate preparation for legislation, simply because such legislation is not unconnected with questions which demand the consideration of the Executive Government."

The Hon'ble MR. HOPE said, in reply, that he had but little to add upon the discussion which had taken place. His hon'ble friend Sir A. Clarke had observed that some of his remarks were an excuse for, rather than a justification of, infringement of private rights. But he had certainly not meant to offer anything which could be deemed merely an excuse, and he was not aware of any expressions having fallen from him which were capable of such an interpretation. With regard to the observations of his hon'ble friend Sir John Strachey, they related to the Executive forest-machinery, which was a subject not dealt with in the Bill, and they appeared to have been merely intended as suggestive to the Executive Department of the Government. Whether the Forest-officers in the one part of India to which alone the Hon'ble Member's remarks had reference were or were not open to the strictures passed upon them, it was not for him to say, as he had no experience of that part. But he ventured to suggest that they were, no doubt, individually as honest and conscientious as officers in any other branch of the public service, and that possibly any unsatisfactory action on their part was in no small degree attributable to the imperfection and obscurity of the law or rules under which they had worked. Now that there was a clear law and a clear policy, he hoped that they would be able to perform their duties with less risk of error or misconception.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

SEA CUSTOMS BILL.

The Hon'ble MR. HOPE also moved that the Reports of the Select Committee on the Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India be taken into consideration. He said—

"When introducing this Bill some sixteen months ago, I explained the necessity for the measure, mentioned a few of the principal changes made, and expressed the desire of Government to facilitate trade and adapt the law to the present circumstances of the country, to the utmost extent consistent with the safety of the revenue and the necessity for registration of trade statistics.

Since then, Committees constituted by the Local Governments at Calcutta, Madras and Bombay, and partly composed of gentlemen of the mercantile community, as also the various Customs authorities, have reported on Bill No. I. Bill No. II was next issued and fully reported on officially. The Chambers of Commerce of Madras and Bengal also favoured us with communications, the latter with a long and important letter containing many very valuable suggestions. In November last I visited Bombay in order to confer with the Chamber of Commerce there, who were so good as to hold a special meeting for the purpose. Finally, the Select Committee have carefully considered the whole with the valuable assistance of my hon'ble friend Mr. Morgan. The result is Bill No. III, now before the Council. As the Bill is so voluminous, I will do no more in explanation than to notice, under a few general heads, the provisions which differ from the present law in matters affecting more or less materially the interest of commerce.

"In the first place, section 12 constitutes a new class of sub-ports, to consist of places where a small trade has sprung up not sufficient to render a full Customs establishment remunerative. These ports will be allowed to trade with certain Customs ports near them, to which they are affiliated. The occasion has arisen in Burma, but I hope that the power may be used for the development of local trade in other parts of India. Again, in section 18, we have provided, at the instance of the Bombay Chamber of Commerce, against the importation of articles bearing any names, brands or marks, being, or purporting to be, brands and marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers.

"Under the head of what may be termed reductions of duties or burdens of one sort or another of direct pecuniary effect, I may enumerate the following. By section 34 the limit of damage for which remission of duty can be obtained for tariffed goods, has been lowered from one-fifth to one-tenth. By section 39 the period during which owners will be liable to claims by Government for duties short-levied or erroneously refunded, has been reduced from six to three months, concurrently with similar reduction of the liability of Government. By section 42 drawback is now allowed upon provisions and stores for use on board ships proceeding to Foreign Ports. By section 71 the two fifteen-day periods for which vessels were allowed the free services of a Customs-officer during discharge and loading respectively, have been amalgamated, so that a longer time may be occupied in either process without involving extra charge until the total of thirty days has been exceeded. In section 88, the period after which unclaimed goods may be sold by Government has been extended

from two months to four, and notice is required to be given to the owner if his address can be ascertained. Section 100 comprises leave to bottle-off wine and spirit in bond. Section 109 dispenses with a fresh bond, on removal of goods from one warehouse to another. By section 132, transhipment of stores is allowed between vessels owned only in part by the same persons. In section 133, weight, measurement, quantity and number have been added to the standards according to which transhipment fees may be levied. In section 139, the additional charge on goods cleared for shipment after grant of port-clearance has been reduced from two to four per cent. Section 148 contains an important alteration permitting spirit exported under bond from one Customs-port to another to be admitted at the latter on payment of excise-duty at the ordinary rate to which spirit of the like kind and strength is there subject, instead of *import*-duty at Rs. four per gallon.

"For the facilitation of discharge and shipment some material modifications of the law have been made. Section 60 allows delivery of the manifest by a ship's agent before the arrival of the ship, and section 66 extends to five days the period after departure of the ship within which an export manifest may be put in. Under sections 74 and 76, the landing and shipping at particular wharves, and in the presence of officers of Customs, as also the use of boat-notes, may be dispensed with—a power which it is expected will be used materially to facilitate operations in the Port of Calcutta. Section 85 contains special provisions, framed in consequence of representations by the Bombay Chamber of Commerce, in order to allow of the immediate unloading of vessels.

"By way of simplification of procedure, an agent has been allowed (section 5) to do, with the express or implied consent of the master, anything which the master is required or empowered to do under the Act. By section 29 an importer unacquainted with the nature of goods to his address is allowed to deposit them in a warehouse until he can obtain information. Section 41 allows of an account current of duties and charges being kept with any mercantile firm or public body and settled periodically, so as to save the trouble of constant separate payments. By section 55 permission to amend obvious errors is given absolutely, but the levy of any fee at all is clearly made discretional with the Customs-collector. Section 130 provides for due notice being given of rules about transhipment, and section 204 requires that all rules shall be periodically published and sold to the public. In section 140 application for leave to reland is dispensed with, and the period for notice of transhipments or relands is extended to five days.

"The privilege of transhipment under section 128 has been extended to vessels of all descriptions, and section 129 makes it clear that the transhipment-fees are to cover the expense of the officers who supervise the process.

"With regard to the coasting-trade, some important alterations have been made. Vessels will not in future lose their character of coasting-vessels merely because they have touched intermediately at some Foreign Port, but will remain under restriction only so long as goods brought from that port are on board. Again, if a coasting-vessel has not touched at any Foreign Port, and has not any dutiable goods on board, she will be able to discharge forthwith, without entry of the goods or clearance for home-consumption. In other words, we shall rely for our statistics on the documents at the port of departure, and the importers will be relieved of all the trouble with the custom-house which they now undergo. By section 166 also, a cargo-book may be held to dispense with a separate manifest.

"In the chapter of penalties, we have made some improvements and relaxations, chiefly in the direction of admitting proof of non-complicity in or ignorance of misdescriptions, and the like. Nos. 20, 27, 37 and 74 of section 167 may be referred to. Complaint has been made that the penalties of the Indian Act are more severe than those of the English. There may be some truth in this in individual instances, but it would be very difficult to graduate a number of offences mostly involving no moral obliquity. The standard penalty in the English Act is £100, and this we all know to our cost to be a larger sum than Rs. 1,000, which is the Indian standard. All these penalties, however, are maxima only, not absolute. It is no doubt difficult to ensure powers being exercised judiciously in all cases by subordinate officers who may be wanting in intelligence or afraid of responsibility. The best course for any merchant who feels aggrieved is to lose no time in bringing his case before the heads of the Department, who are pretty certain to deal liberally with it.

"While thus taking credit for a large number of relaxations in favour of commerce, I must admit that in some few instances we have made the law more stringent. With regard to the sales of goods taken over by Government on account of under-valuation, we could not resist the weight of testimony that there was at times a difficulty in realizing their full value by auction. But while giving the Collector, therefore, a power of selling them otherwise in the last resort, we have obliged him to put them up to auction in wholesale lots for cash on delivery, and in any case to dispose of them without unnecessary delay.

"On the whole, I think the Select Committee may fairly claim to have acted up to the declaration of willingness to facilitate trade operations which I have already referred to. There appear to be only two ways of going any further. One of these is by reducing somewhat the demands of the Statistical Department. I am prevented by an accidental circumstance from producing for the inspection of the Council the local volume for the Madras Presidency of statistics of trade and navigation for the year 1875-76. This ponderous affair weighs some 40lbs, it measures about a cubic foot, and, though not yet published, owing to the labour of compilation and printing, it is already out of date. What, I would ask, in the name of common sense, is it possible to do with such a thing? Perhaps you might, as Sydney Smith said of a certain portly widow, walk round it before breakfast, but as to reading and using it—never. Seriously, statistics are no doubt useful things, and returns regarding all leading articles of commerce, and of the trade of important centres or ports of a certain size, are necessary. But the utility of requiring an infinity of returns on trivial matters, and piling up checks and counter-checks, especially about the petty-trade of obscure ports, seems very questionable. It would surely be sufficient to be content with a fraction of what we now collect, and to be content with reasonable instead of almost absolute accuracy—say within ten per cent. in the case of free goods, for instance, as in the London Custom-house. I am well aware that this question has already attracted attention in the department over which the Hon'ble Sir Alexander Arbuthnot presides, and that they contemplate such relaxations, and those not inconsiderable, as lie within the power of the Government of India. If my remarks should have the effect of attracting further attention to the subject and supporting still further improvements, they will not have been thrown away. The second step by which Custom-house restrictions might be further and very largely relaxed, is by alteration of our Customs-tariff. If it were possible in lieu of the fifty or sixty main heads of the import-tariff, comprising many hundreds of subordinate items, to have duties on only six or seven important, well defined and readily distinguishable articles, the relief afforded in the matter of preventive scrutiny, check, stoppage, seizure and the like, and informalities, would be enormous. It is of course no part of my duty to indicate or suggest any policy of this sort on general grounds. What I say is said merely in connection with the subject of customs procedure now before us. The first step I have referred to at least is one readily practicable, and will, I trust, be ere long fully acted on. For the present, it would seem that the Bill effects all that legislation now can do to relax customs restrictions, and I trust that the Council may approve and pass the Bill accordingly."

The Motion was put and agreed to.

The Hon'ble MR. HOPE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 13th March 1878.

CALCUTTA,
The 6th March 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 856 L. D.—22-3-78.—235.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 14th March, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, C.S.I.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble G. H. P. Evans.
The Hon'ble G. C. Paul.
The Hon'ble E. C. Morgan.
The Hon'ble F. R. Cockerell.

ADDITIONAL RATES (CENTRAL PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY presented the Report of the Select Committee on the Bill for the levy of Additional Rates on Land in the Central Provinces.

The Hon'ble SIR JOHN STRACHEY also moved that the Report be taken into consideration. He said that in making this motion he had only a few observations to make on the provisions of the Bill. The measure, as the Council was well aware, was part of the new taxation scheme lately brought forward by Government to enable it to meet the expenditure which must be incurred for the relief and prevention of famines. The present Bill was not passed at the same time as the other measures, because some further reference to the Chief Commissioner of the Central Provinces had been necessary, and the information which was required in order to admit of its provisions

being drafted was not then complete. This information had since then been obtained, and the Bill had been drafted in accordance with it. The practice of levying cesses in addition to the land-revenue already existed in the Central Provinces, but the present cesses were collected under engagements which had been entered into by the people at the time of settlement and not under powers conferred by any law. Now that steps were being taken for meeting famine expenditure by the imposition of taxation in addition to the land-revenue, it was necessary that there should be a law to authorize its collection, and that law would be contained in this Bill if it should be approved by the Council. In drafting its provisions the recent Acts had been followed as closely as possible, and even their wording had been, for the most part, adhered to. There was one point only in which the Bill differed at all from those Acts, and that was not one of principle, but of practice only, the object of which was to regulate the manner in which effect was to be given by the Executive Authorities to the provisions of the law. The principle of the Acts already passed was that all proprietors of land should be taxed at the rate of one per cent. of the total rental of their estates. Now, in the Upper Provinces, proprietary title in land was, generally speaking, free from complications. It was, for his present purposes, a sufficiently correct description of it to say that the entire rental of every estate was divided into two equal shares, one of which belonged to the proprietor (whether a single individual or a co-parcenary body), and the other share to the State, that was to say, that each person, whether the land owned by him was much or little, received half of the rental of the land, and paid the other half to the Government. But in the Central Provinces the nature of proprietary rights in the soil was not so simple. Those Provinces lay between the zamíndárí tenures of Bengal on the North and the raiyatwárí holdings of Southern India on the other side, and the tenure of the land in them was much affected by their situation. In the districts which adjoined Bengal, the superior owner of an estate enjoyed the whole of the rent. In the Southern and Eastern parts of the Provinces a large share of the proprietary profits was retained by the tenants, and the zamíndár or patel received only a part of the rental. Between the zamíndár and the lowest class of tenant there were various intervening grades who participated, more or less, in the proprietary profits. Some of these different tenures occurred in almost every village; in many several, and in some villages all, of them could be found. Obviously, the profits received by landlords in any part of these Provinces varied inversely to the extent of the subordinate tenures which might exist, and their liability to pay the rate now proposed should vary, in justice, according to their share of the profits. A málguzár, for instance, might very reasonably be called upon to pay the full cess in respect of tenures-at-will; but it would hardly

be fair to call upon him to do so in respect of lands where perhaps twenty or thirty or more per cent. of the rental never reached him, but was intercepted by the owners of intermediate holdings. To prevent any injustice of that sort the alteration which had been mentioned was introduced into the Bill. That alteration, as compared with the Bills passed for Northern India, would be found in section 6, clause (*a*), and the object was to enable the Chief Commissioner, in assessing the tax, to follow the proprietary rights into the hands of all the different classes who enjoyed a share of them, and to take from each of those classes what would be a fair contribution from them according to the proportion of the rental which they enjoyed. It had been ascertained from the Chief Commissioner that there would be no practical difficulty in applying such a rule. The Select Committee had therefore no hesitation in laying upon the Local Government the duty of making these proportional assessments. The fair and reasonable nature of such a provision was so self-evident that he need not take up the time of the Council with any arguments in support of it. The Bill, he might add, had received the cordial concurrence and approval of the Chief Commissioner of the Central Provinces. As in all its provisions, except the one which SIR J. STRACHEY had now explained, the Bill was nothing more than a simple re-enactment of the measures which had quite lately been passed,—and passed by the Council after full deliberation and discussion—and as it was evidently desirable that this, the only remaining legislative measure rendered necessary by the recent extension of taxation for the purpose of meeting expenditure on famines, should also be passed without delay, he hoped the Council would accept the recommendation of the Committee and would allow the Bill this day to become law.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ARMS BILL.

The Hon'ble SIR EDWARD BAYLEY moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Arms, Ammunition and Military Stores be taken into consideration. He said that, in presenting the Report of the Select Committee, he had called the attention of the Council to the very considerable alterations which had been made in the details of the Bill, and for the present he would say no more upon that subject. He wished to address himself on this occasion rather to the objections which had been taken to the principle of the Bill. They had been told that no case had been made out for the Bill; that it was apparently entirely unnecessary. One

representation which they had had from the British Indian Association went so far as to say that no facts or arguments had been adduced to establish the necessity for such rigorous legislation. Well, he really did not know what evidence would satisfy every one. He thought he had been at some pains, when he moved for leave to introduce the Bill, to show how urgently the necessity for some such measure had been for many successive years persistently pressed upon the Government of India by almost every Local Government and Administration. He mentioned also certain statistical facts which proved the existence of a large and increasing traffic in the very description of arms which it was most undesirable should be introduced into India; and the Council had still been told that no case had been made out. So far as he could understand, the only statement to contravene the evidence he then adduced was, first, that the importation of arms and the value of arms had been diminishing during the last five or six years, instead of increasing; and in the second place, that a great number of people had been destroyed by wild beasts. He did not in the least propose to controvert either of those statements; but he had taken pains to show, when he introduced the Bill, that he was perfectly aware of the fact that a diminution had taken place in the actual imports of arms, and he gave the reason for it, that was to say, that the Government of India had put into force certain powers which they possessed under the Customs Act of absolutely prohibiting the importation of arms of a certain description. Well, that was a very useful power, and one which the Government proposed to retain. It would supplement very effectively the provisions of the present Bill. But he also pointed out that it was one which by itself was very easily evaded, and that the Local Governments were not satisfied with it; that they asked for more power, and were not apprehensive that these additional precautions would be abused. He went further, and had told the Council that the Government of India were in possession of information which showed that the importation of arms would, if the existing law were not supplemented by a fresh and more stringent legislative enactment, very soon be very largely and injuriously increased. He thought himself that that was sufficient evidence of the necessity for the Bill, even if it had not been supplemented by the very definite expression of opinion by his hon'ble friend the Member in charge of the Military Department, whose opinion on a subject of that character should, SIR EDWARD BAYLEY thought, be received as decisive. However, if more evidence was wanted,—that is, if those who had denied the necessity for the Bill wanted more evidence—he would say that this Bill had now been published; it had been commented upon with very great care, he was gratified to say, by a large number of local officers, and he had noted something of the result. A great many, in fact a large majority, of the officers who had been consulted had not

taken any notice at all of the principle of the Bill or the necessity for it. But he might say that in their remarks almost all of them had implied their approval of the Bill. But a considerable number of those officers had gone out of their way in express terms to approve of the Bill and to declare the necessity for it. He would mention some of them—

The Panjáb Government thought the provision for controlling the possession of arms a wise and salutary one.

The Commissioner of Deraját considered the Bill salutary and called for.

The Commissioner of Múltán thought the provisions of the Bill salutary and urgently called for.

The Commissioner of Jalandar thought the Bill urgently needed.

General Keyes had long since pointed out the need for amending the law and approved the Bill.

The Inspector-General of Police approved of the Bill, and urged that it should be made more stringent.

In Bengal *the Commissioner of Dacca* had no doubt of the expediency, if not of the necessity, for controlling the present facility for acquiring arms.

The Commissioner of the Presidency Division called the provisions of the Bill good and suitable.

One of the most distinguished Judicial officers in Bengal, *Mr. Field*, goes out of his way to call it a wise and necessary measure.

In the Birárs, *Sir R. Meade* entirely approved of the provisions of the Bill.

The Commissioner of the Haidarábád Assigned Districts thought the Bill admirable in intention and scope, and admirably drawn.

In Bombay *the Government* approved of the Bill generally.

The Commissioner in Sindh did the same.

The Commissioner of the Central Division had for years advocated a similar Arms Act.

The Commissioner of the Northern Division thought the Bill would undoubtedly meet a great want.

In the North-Western Provinces *the Government* approved of the Bill subject to some amendments.

The Commissioner of Jhánsi called it an excellent and very necessary Bill.

In the Central Provinces *the Chief Commissioner* thought the necessity for the Bill as an imperial measure was proved.

In Madras *the Government* approved the principle of the Bill.

One Collector, *Mr. Thomas,* said he had himself recommended a Bill on the same lines.

Another, *Mr. Webster,* said the measure was imperatively required.

Well, SIR EDWARD BAYLEY hoped, although he could not expect to satisfy every one, that these expressions of opinion might be taken as sufficient. He could say that almost every officer who had been consulted had either, as he had said, expressly or impliedly approved both the principles of the Bill and the direction in which it went. There was actually only one exception, and all that was necessary to say of it was that the exception seemed to prove the rule. Sir William Robinson in Madras had no doubt taken the exact line which the British Indian Association had taken. So much for the necessity for the Bill. They had been told, it had been said in some quarters, that the Government had brought in the Bill under the influence of a scare. Well he thought he had shown, and the papers had shown to the Committee, that, so far from this being the case, for at least eight successive years the Government had been pressed to pass a Bill precisely on these lines; that they resisted doing so until the necessity for it was absolutely shown. So far from the Bill being passed under a scare, he might say, that some of the most important information showing the necessity for the Bill had only been received since it had been introduced.

He would not trouble the Council with any further general details of the Bill. There were a number of objections taken, and he was bound to say that some of them had been taken with great force, and had proved very useful to the Committee in settling the details. He might class them into three classes, first, that the Bill was too stringent, unnecessarily severe, and that a portion of it was not workable. He was bound to admit, and he had pointed out when the Bill was introduced, that there was a slight oversight in drafting; that the Bill in its original shape had certainly been made somewhat rigid by the old provision as regards the proclaimed districts having been removed. But that had been altered in Committee by the restoration of this provision. In the next place they were told that the Bill was too severe. He had pointed out how largely the Committee had modified the severity of the Bill by amendments which they had made. He had himself assented to those amendments; but he thought that if they erred in any way, they erred, perhaps, somewhat in the direction of over-relaxation. Personally, however, he was contented

with the Bill as it stood, with the exception of a trifling verbal amendment which he proposed to move on the present occasion. Then, again, they were told that some of the provisions of the Bill were not clear; the objection thus taken was doubtless good, and the Committee had done their best to remedy the defect. He trusted that the Council would, on looking over the Bill in its present shape, be willing to agree, first, that a case had been made out for a Bill, and for a Bill drawn on the lines of the present measure; and, secondly, that the Bill had been shorn of most, if not all, of its objectionable features. At any rate, he must thank the Committee for the very patient attention they had given to its provisions and the trouble they had taken to make the Bill workable.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY, with the permission of His Excellency the President, moved the following amendment:—

First, that in section 17, clause (*b*), for the words "except a license for possession," the following be substituted, namely:—

"granted in a place to which section 32, clause 2, of Act No. XXXI of 1860 applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place."

Secondly, that in section 17, clause (*c*), for the words "except as aforesaid," the words "other than a license for possession" be substituted.

The object of the amendment was to impose a license for possession of arms of all kinds in those parts only of the country which had been already disarmed under the provisions of Act XXXI of 1860. His motive, he must explain, in bringing forward the present amendment, was partly a financial one, although that was not his principal object. He hoped to be able to show to the Council, looking at the matter from a financial point of view, that the privilege of possessing arms in parts of the country which were already disarmed, and to which alone he now referred, was a legitimate source from which to derive revenue, and that it was a point of some importance in connection with the late measures for extending the financial powers and responsibilities of the Local Governments. He said that, as a source of Imperial revenue, the receipts from fees of this kind would, no doubt, be quite insignificant, but from a Provincial point of view they were not without importance. As an illustration of this importance, he might mention that in the North-Western Provinces, with which he was best acquainted, it was calculated that such fees levied upon a very moderate scale would yield not less than one lákh of rupees a year—a sum which would be very valuable as an addition to the Provincial finances. It would be difficult in his opinion to find any other way of raising such

a sum which would be open to fewer objections. For levying such fees was taxing a luxury, and had all the merits of that kind of taxation. He knew, of course, that there were tracts of country where, from the great numbers of wild beasts or the proximity of turbulent neighbours or from other dangers, arms were a necessity,—a necessity and not a luxury. Where this was the case, no one could recognise more fully than he did that we ought to do nothing whatever which could in the slightest degree interfere with the means of protection which the people really required in those tracts. But such parts of the country were exceptional, and they could be sufficiently provided for under the powers of exemption which the Bill conferred on the Government. Leaving them out of sight for the present, and speaking of the disarmed tracts to which alone his amendment would apply, he affirmed, without hesitation, that the privilege of possessing arms was a luxury. It was usually sought for, not so much on account of the protection afforded by the arms, as because they enhanced the dignity of the wearer, and conferred upon him some kind of personal distinction. He could recognise no reason for exempting persons who wished for a privilege of that sort from paying something for it. He would go farther and say that he could hardly call to mind any more suitable and legitimate means of obtaining revenue than that of calling upon people who desired such marks of distinction to pay for them. Such a source of income fulfilled all the conditions which were required in taxation. The amount payable would be certain and easily known by every body. No one need pay it at all who found it inconvenient to do so. And those who did pay would contribute in proportion to the advantages obtained by them. Exception had, he knew, been taken to the proposal on the ground that it might offend against another fundamental rule of taxation by compelling the tax-payer to pay more than was likely to find its way to the treasury. It had been said that, to levy fees on licenses for the possession of arms might give opportunities for oppression and extortion, and might do more to enrich the underlings of the Magistrates' Courts than the public treasury. SIR JOHN STRACHEY thought that this objection would not be found good upon examination. He had already said that the operation of his proposed amendment would be confined to those districts in which the possession of arms was prohibited, and in which there was no intention of relaxing that prohibition. In such places it was impossible to dispense altogether with licenses. Section 15 of the Bill made provision for the grant of such licenses, and it was obvious that without them the Government had no means of keeping itself informed, or of controlling the number, of arms which were from time to time in the hands of the people. But if licenses were required at all, the objection to charging fees for them lost all its force; because it was not the fee charged which gave the opportunities of peculation,

but the necessity of applying for and obtaining a license which had to pass through the hands of subordinate officials. But in his humble opinion, speaking of the Provinces to which alone it would apply, he believed that those anticipated dangers had really no existence whatever; certainly not more than in most other forms of taxation which might be named—in octroi-collections, in inland customs-collections, and in license-tax collections. He believed that the only effect of charging fees for the possession of arms would be to add by the amount of those fees to the cost of obtaining them. This additional cost was very far, in his opinion, from being a disadvantage; for the Council was now considering the case only of those parts of the country where it had been determined, on grounds of political expediency, that the people ought not generally to be in possession of arms, and where a cheap and abundant supply of them was on no grounds desirable.

He had dealt now with the only objection which he had heard to the proposed levy of duties on these licenses. He wished to add some very important evidence in confirmation of the arguments by which he had sought to support his amendment. In the North-Western Provinces, this special subject had undergone very long and careful consideration, and the result had been to elicit the strongest possible opinions in favour of the measure which he was advocating. So far back as 1870, Sir W. Muir, the then Lieutenant-Governor, appointed a Committee of the most experienced officers to consider the best way of adding to the revenues. That Committee made various recommendations, and, amongst them, advised the imposition of a duty on arms-licenses; and SIR J. STRACHEY would, with the permission of His Excellency, read a short passage from the Committee's report:—

"35. It is unnecessary to propose any further taxation for actual requirements. The Committee desire, however, to point out that a legitimate source of income may be found by enforcing fees on the issues of arms-licenses. Arms in this country are in the great majority of cases used as a means of increasing the dignity or supporting the rank of the Natives who wish to carry them. * *

* * * * * * * *

The probable income arising from this source is conjectural only. It will probably be not less than £10,000 per annum."

Sir W. Muir entirely approved of that recommendation, and, in June, 1871, submitted a proposal to the Government of India for carrying it into effect. In the letter which he wrote to the Government of India he said—

"The Lieutenant-Governor concurs generally in the views of the Committee. The scale of fees and the suggested rules for issue of licenses appear suitable, but the Local Government might, His Honour thinks, receive power to vary these, within certain limits, from time to

time, as may be found expedient. For districts that have not been disarmed the scale is perhaps too high, and there it might be reduced one-half.

"The Lieutenant-Governor is further of opinion that in all parts of the country which have been disarmed, licenses should be required, not only to carry, but to possess, arms.

"Exemption will be readily granted in parts of the country where prevalence of wild beasts or other danger may render it expedient that arms should be possessed or used."

The proposal thus made was not carried into execution. It was brought forward originally by Sir W. Muir under the impression that it was absolutely necessary to provide further means of meeting Provincial charges. But the condition of the Provincial finances having turned out better than was expected, it was dropped. In 1876, when SIR J. STRACHEY was Lieutenant-Governor of the North-Western Provinces, the question was again taken up. It was discussed by a number of the most experienced officers of the Government of the North-Western Provinces, and they were unanimously of opinion that it was extremely desirable to charge license-fees for the possession of arms. He himself entirely concurred in the view thus taken, and he was in a position to say that the same opinion was held by the present Lieutenant-Governor of the North-Western Provinces. Thus, in the North-Western Provinces three successive Lieutenant-Governors and, he believed, all their most experienced officers, had during the last eight years, expressed strong opinions in favour of the amendment which he was now asking the Council to adopt. He hoped that a measure which had such strong authority to support it would be approved by the Council that day.

The Motion was put and agreed to.

The Hon'ble SIR E. C. BAYLEY moved—

That to section 32 the following words be added, namely :—

"Any person refusing or neglecting to produce any such arms when so required, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both."

He said the amendment was really one of a technical nature. He had mentioned, when presenting the Report of the Select Committee, that a clause had been introduced in section 32, requiring persons in possession of arms to produce them when required. But by mistake no penalty was affixed to the section by means of which it could be enforced. The amendment of which he had given notice was simply intended to correct the error.

The Motion was put and agreed to.

The Hon'ble SIR EDWARD BAYLEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Leave was granted.

PANJÁB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. STOKES then presented the Report of the Select Committee on the Bill to amend the Panjáb Laws Act, 1872.

NATIVE PRESS BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved for leave to introduce a Bill for the better control of publications in Oriental languages. He said:—"My Lord, copies of the Bill which has been framed for this purpose, have been already circulated for the perusal of Hon'ble Members, together with a statement of the objects which it is intended to effect, and of the reasons which have led to its being prepared.

"For reasons which I will state presently, it will be my duty to ask the Council, in the event of my present motion being adopted, to proceed at once to the consideration of the provisions of the Bill with the view of its being passed at this day's sitting, and I will therefore endeavour to explain, as fully and as clearly as I can, the considerations which have influenced the Government in bringing forward this measure.

"Now, my Lord, the object of the Bill which I desire to introduce, is to place the Native newspapers, or, to speak more correctly, the newspapers which are published in the vernacular languages of India, under better control, and to furnish the Government with more effective means than are provided by the existing law, of repressing seditious writings which are calculated to produce disaffection towards the Government in the minds of the ignorant and unenlightened masses. Another object is to check a system of extortion to which some of our Native feudatories, and many of our Native employés, are exposed by the rapacity of unscrupulous Native editors.

"My Lord, this measure has not been resolved on without most careful and anxious consideration, both on the part of the present Government, and on the part of the Government of your predecessor. It has not been resolved on

without much reluctance; for, directed as it is against a particular class, it involves a description of legislation which is opposed to the traditions, and is repugnant to the principles, upon which the administration of British India has been conducted during a long series of years, and which would not have been resorted to except for very cogent reasons. It is only because, in the opinion of the Government of India, the evil against which this measure is directed is one of great and increasing magnitude; because it is calculated to lower the *prestige* of the Government, and to weaken its hold on the esteem and affections of its subjects; and because the existing law does not furnish any adequate means of dealing with it, that the Government have decided to have recourse to special measures for its repression.

"My Lord, when the Press of India was liberated by the Government of Sir Charles Metcalfe from the restrictions which had previously been imposed upon it, and when it was placed in the position of freedom from State interference, which, with the exception of one brief interval of a single year, it has occupied since 1835, the Native Press was a thing of comparatively little importance. In one of the Minutes written at that time, Mr. Macaulay states that the papers printed in the languages of India were few, and exercised very little influence over the Native mind. The entire circulation of Native newspapers throughout the country did not then exceed three hundred copies. Since those days a great change has taken place. Newspapers printed in the vernacular languages are published in most of the large towns in Bengal, Bombay, the North-Western Provinces and the Panjáb, are read and studied by considerable numbers of people, and exert an influence over the popular mind which it is difficult to exaggerate.

"My Lord, it is not my wish to include the whole of the Native Press in the charge which I am about to prefer against individual members of it. I know that that Press includes many respectable papers, which are doing a useful work, and which are entitled to every encouragement that the State can afford to them. It is not against this class of newspapers that the present measure is directed. But there is a large and increasing class of Native newspapers, which would seem to exist only for the sake of spreading seditious principles, of bringing the Government and its European officers into contempt, and of exciting antagonism between the governing race and the people of the country. This description of writing is not of very recent growth; but there has been a marked increase in it of late, and especially during the last three or four years. During the past twelve months it has been worse than ever, the writers gaining in boldness as they find that their writings are allowed to pass unpunished. Their principal topics are the in-

justice and tyranny of the British Government, its utter want of consideration towards its Native subjects, and the insolence and pride of Englishmen in India, both official and non-official. There is no crime, however heinous, and no meanness, however vile, which, according to these writers, is not habitually practised by their English rulers. According to them, 'the Government is not a just, but a monstrous Government. As monsters are said to eat their own children the English Government is destroying its own children, namely, its subjects.' According to them, 'avarice, frugality and cunning characterize all the acts and measures of Englishmen.' According to them, 'their rulers violate with pleasure the laws and regulations which they have enacted.' According to them, 'the British Government is continually breaking its promises. A history of the non-fulfilment of promises by the British Government would be the whole history of the last hundred and fifty years.' According to these writers, 'one of the objects of the English authorities in maintaining and enhancing the salt-tax is to enable their own countrymen to import English salt into this country, and to enrich them at the cost of the Natives' One writer ironically affirms that 'neither the laws of nature, nor the civil laws of India, provide any punishment for those Europeans who kill Natives. The laws of nature ascribe such fatal incidents to destiny, and the civil laws are helpless because Europeans are the dominant race.' Another writer asserts that 'all laws are applicable to Natives alone, and not to Europeans. Europeans are enabled to kill Natives with perfect impunity.' Another alleges that 'of those diseases which generally prove fatal, one is the European plague, which is daily spreading over the country, and for which no remedy has yet been found. We refer to the readiness of Europeans to assault, and sometimes murder, Natives.' Another writer compares the English Government in India to a beautiful, but unprincipled, woman—

"'whose charms and attractions are irresistible, but who is cunning, deceitful and cruel at heart. All men are in love with her Now she lends her graces to one lover, and now to another, and thus causes the rivals to fight together and perish. At her first advent in India she was not very attractive, as her beauty had not fully developed But when gradually her beauty was fully developed, whoever looked at her was entrapped Men saw with their own eyes how she had already dealt with a number of their fellows, and knew that she was selfish, and an enemy of their faith, yet they were foolish enough to court her, and dig their graves with their own hands. All the great Native Chiefs of India, including the Kings of Delhi, one after another, fell a victim to her charms, and she pitilessly robbed them of all their estates and property She next turned her attention to the Chiefs of the middle class, and relieved them of all they had except their wearing apparel'

"The extracts which I have read, are specimens, extracted haphazard from a great number, of the manner in which the British Government and the

English race are habitually aspersed and held up to the contempt and hatred of the people of India. Of late, however, a further step has been taken, and a beginning has been made, in the direction of inciting the people to upset the British Ráj by denunciations, sometimes open and sometimes covert, of the alleged weakness and timidity of the English, and their inability to maintain their present position in India.

"'England,' it is said, 'has no efficient army. Like her, Carthage, too, possessed immense wealth, but that could not save the great commercial city of ancient days from a complete downfall. While Government is always ready to make a show of its power in fighting with weaker foes, such as the King of Abyssinia, and the Gáros and the Lushais, a policy of subsidizing is always resorted to in dealing with the Amír of Kábul, and one of conciliation adopted towards the barbaric Chief of Khilát. The rule of our country has passed into the hands of foreigners, and we have lost all our independence. However, we must buoy ourselves up with hope under the pressure of the present calamity, and not despair. Seeing that such mighty Kings as Vikrámaditya, Rámchandra and Rawana have passed away, the short-lived Kings of the present times have no stability."

"The *Kasht Vilásni*, a newspaper published at Púna, compares the English Government in India to a cunning traveller, who, passing by the door of a hospitable and kind-hearted gentleman, asks his permission to rest at his door for a short time, and gradually contrives to oust him and usurp his house and property; but there will be no great difficulty in driving out the usurper if all men jointly make a bold effort to do so. The Natives should gird up their loins and devise measures for improving the prosperity of the country.

"I will not take up the time of the Council with further extracts. I think it will be apparent from what I have read, that the description of literature to which these articles belong, is eminently calculated to unsettle the minds of the people, and to make them disaffected towards their rulers. While I say this, I do not for a moment desire to imply that the Government distrusts the loyalty of the great body of Her Majesty's Indian subjects, or that these writings correctly represent the sentiments entertained by the people generally. Indeed, I have very little doubt that there is a good deal of mere froth and vapour in these foolish and mischievous articles; but in India, as in other countries, writing of this description finds numerous readers, and ought not to be allowed to go on unchecked.

"My Lord, it cannot be said that the state of things which has arisen has taken the Government altogether by surprise. That such a state of things would be one of the results of granting complete freedom to the Press in this country, was predicted many years ago by men whose honoured names have long

been household-words in Anglo-Indian history. I doubt not that many of the Members of this Council are acquainted with the remarkable Minute which Sir Thomas Munro, one of the ablest of the many able Statesmen who have aided in consolidating British rule in India, recorded on this subject in 1822. I well remember the interest with which this Minute was re-perused at the time of the Mutiny, and how impossible it was not to be struck by the almost prophetic character of the utterances which it contained. But Sir Thomas Munro was opposed to granting freedom to any section of the Press. He regarded the unrestricted freedom of even the English Press, which in his day was indeed the only Press worth considering, as inconsistent with the maintenance of our rule. Since that time circumstances have greatly changed; and I do not believe that that far-seeing and sagacious Statesman, if he were now among us, would counsel the re-imposition of restrictions upon the English Press. However this may be, I do not rest my argument on the policy of restriction advocated by Sir Thomas Munro. I rest it upon the opinions of men who were parties to the policy of liberation which was carried out in 1835, and who, it is evident from their writings, did not overlook the possibility that such a state of things might arise, as that with which the Government of India are now called upon to deal. Both Sir Charles Metcalfe and Mr. Macaulay, the one the originator, and the other the draughtsman and the eloquent defender, of the Act of 1835, while arguing strongly in favour of a free Press, advert to the possibility of circumstances arising which might compel the Government of the day to resort again to legislation of a restrictive character. Their language is general, and it is evident that, while they contemplated the possibility, they did not attach any great importance to it; but there was one Member of that Council, one who has only lately passed away, full of years and honour, after an unusually lengthened official career, prolonged into a ripe old age, one whose name will long be remembered in this Presidency, who, while assenting to Sir Charles Metcalfe's measure as being well-suited to the circumstances of the time at which it was passed, predicted in the plainest terms the evils which have resulted from granting unrestricted freedom to the Native Press.

"My Lord, these are Mr. Prinsep's words :—

"'I do not go quite so far as to say broadly, and without reserve, that I do not apprehend danger to the State from the Press of India being free. I see no immediate danger in the present state of things, nor, in the future, danger such as the existing laws would provide for better than the laws made especially for the purpose when the danger threatens. Therefore, I cordially assent to the repeal of the laws; but I think the eye of Government will require to be kept continually upon the Press, and especially upon the Native Press; for it is capable of

being made an engine for destroying the respect in which the Government is held, and so undermining its power.

'At present, this Press is nothing, and the controlling or influencing it would be an easy task, were Government disposed to direct its efforts to do one or the other; but if we let it grow till the danger from it is imminent, we may then find it a giant to wrestle with.'

"Again:—

"'So long as discussion is carried on in English, it is no more formidable than similar discussion in England and America. The Government will have its advocates as well as its assailers; and, considering that a vast proportion of the best informed of those who mix in the controversy, will be employés of the State interested in maintaining it as an object of respect, I have little fear of the spirit that would prevail, or of the effect of having this branch of the Press entirely free. But the case is not quite the same with the Native Press. It may take a malignant turn, calculated and designed to set the whole population against us.'

"My Lord, that a considerable section of the Native Press has taken a malignant turn, calculated, and in some cases designed, to set the whole population against us, would, I think, be sufficiently proved by the writings of which I have read specimens to the Council, even if it had not, as it has, become a matter of notoriety which is frequently discussed in the English newspapers, and by the more respectable Native newspapers.

"My Lord, I have said that the existing law is inadequate for the suppression of the evil which this Bill is intended to remedy. The existing law is contained in an Act of 1867, which provides for the registration of printing-presses and newspapers, and in a section of the Indian Penal Code which makes seditious words or writings punishable. Now, this section of the Penal Code really furnishes a very inadequate means of dealing with such writings as those with which this Bill is intended to deal. In the first place, the explanation which has been added to the section, renders the penalties inapplicable to any case in which there is not an obvious intention on the part of the writer to counsel resistance to, or subversion of, the lawful authority of the Government. Therefore, to much of the writing to which I have drawn the attention of the Council, this law would not apply; for there is a great deal of it, which, though very mischievous in its effects, cannot be said to come under the category of counselling resistance to lawful authority, or subversion of that authority. It will, perhaps, be said that, if so, the proper course is to amend the Penal Code, and to provide therein suitable penalties for those who, without advising rebellion, inflame the minds of the people against their rulers. I am sure that the Council will not for a moment suppose that this very natural question has not been deliberately con-

sidered by the Government; but, after the most careful reflection and consultation with our Law Officers, and with the Local Governments, the conclusion which we have arrived at is, that no such amendment as could be made in a Penal Code, which is necessarily of general application, would adequately and properly meet the peculiar requirements of the present case. The distinction made in the section to which I have referred, between writings which indicate a manifest intention on the part of the writer to instigate resistance to the authority of the Government, or subversion of that authority, and writings which, while expressing strong disapprobation of the acts, or conduct, or policy, of the Government, are not inconsistent with a disposition to render lawful obedience to the Government, is a very reasonable and proper distinction. It would, of course, be possible to introduce into the Penal Code a provision rendering penal all writings calculated to inflame the minds of the people against their rulers, irrespective of the intention of the writers; but such a provision must be of general application, and, like the rest of the Penal Code, it must be essentially punitive. The principle of the Bill which I desire to lay before the Council, is a different principle. For reasons which I will explain presently, the provisions of the Bill will apply only to one class of writers, namely, the writers in the vernacular Press, and the measure is not so much a measure of penal, as it is a measure of preventive, legislation. The machinery by which it will work, is a machinery of checks, rather than of penalties. Its object is to check mischievous writings of the nature of those to which I have alluded, not by penal sentences, but by requiring the offenders, or those in regard to whom it may be apprehended that they are likely to offend, to engage and deposit security for their good behaviour, or by merely warning them; and it is only in the event of the engagements being broken, or the warnings being disregarded, that the penalties which the Bill provides will be put in force. Another very serious practical difficulty is, that no amendment of the law which left the repression of these offences to depend upon a successful prosecution in a Criminal Court would meet the case adequately; and this remark applies, not only to that class of cases which, as I have said, is not covered by the Penal Code, but also to those cases to which the provisions of the Penal Code are expressly applicable. Even if it were perfectly certain that in every case a conviction would be obtained, the political effect of such trials would be bad. They would be certain to create a good deal of excitement, and would invest the accused with a fictitious importance in the eyes of their more ignorant countrymen, which it is desirable to avoid. What is needed, is a procedure more summary, and, as I have said, framed rather with a view to prevention, than with a view to punishment.

"My Lord, considerations of a somewhat analogous character, although not exactly similar, render it advisable in the opinion of the Government of India that, while we are enacting a law for the better control of the Native Press in the general interests of the State, we should take the opportunity of repressing more effectively than can be done by the Indian Penal Code, the crime of extortion when practised by an unscrupulous journalist. We have evidence on which we have every reason to rely, that threats of newspaper attacks are not unfrequently resorted to by unscrupulous Native editors as a means of extorting money from Native Chiefs and other Natives of rank, and from high Native officials. Such persons often shrink, and not unnaturally shrink, from entering upon a criminal prosecution before the ordinary Courts. In their case, also, we need a remedy more summary, and which the injured persons will be less indisposed to resort to.

"I will now endeavour to explain, as briefly and as clearly as I can, the provisions of the measure which I propose to lay before the Council. In the first place, I may remark that the Bill is restricted in its operation to publications printed in oriental languages, or in fact mainly to publications in the vernacular languages of India. I will refer again to this point presently.

"Then the Bill is essentially an enabling Bill. Its chief provisions will take effect only in those parts of India to which they may be especially extended by the Governor General in Council, and will cease to have effect in those parts whenever the Governor General in Council so directs. For instance, it is not at all probable that the chief provisions of the Bill will, for the present at all events, be extended to the Presidency of Madras, as we know that hitherto the vernacular Press of that Presidency has been altogether inoffensive, and there are no grounds whatever for bringing it under restrictions. Wherever this is the case, the position of the Native Press will practically be the same as it is at present. And not only is the Bill mainly an enabling Bill in regard to its extension to particular Provinces or parts of India, but the application of its chief provisions is permissive, and depends upon the discretion of the Executive Government; and the enforcement of the checks and penalties for which it provides, rests with the Local Government, and not with any inferior authority. In regard to the system of checks which the Bill establishes, I cannot do better than read to the Council the remarks made on this point in the Statement of Objects and Reasons:—

"'*First.*—The Magistrate may, with the previous sanction of the Local Government, require the printer or publisher of any such newspaper to enter into a bond binding himself not to print or publish in such newspaper anything likely to excite feelings of disaffection to the Government, or antipathy between persons of different races, castes, religions or sects, and not to

use such paper for purposes of extortion. The Magistrate may further require the amount of this bond to be deposited in money or securities.

'*Secondly.*—If any newspaper (whether a bond has been taken in respect of it or not) at any time contains any matter of the description just mentioned, or is used for purposes of extortion, the Local Government may warn such newspaper by a notification in the Gazette; and if, in spite of such warning, the offence is repeated, the Local Government may then issue its warrant to seize the plant, &c., of such newspaper, and when any deposit has been made may declare such deposit forfeited.

'*Thirdly.*—As the provisions regarding the deposit of security and the forfeiture of the deposit would, perhaps, be found to press unduly on some of the less wealthy newspaper proprietors, clauses have been inserted enabling the publisher of a newspaper to take his paper out of the operation of this portion of the Act for such time as he pleases, by undertaking to submit his proofs to an officer appointed by the Government before publication, and to publish nothing which such officer objects to.

'Any publisher may, if he chooses, do this at the time when he is called upon to deposit security; and if he does so, no security can be demanded from him.

'Again, if he does not choose to avail himself of this provision at that stage, he may subsequently, in the event of a warning being issued against him, offer such an undertaking, and if the Magistrate accepts it, the proceedings are at an end.

'As regards books, pamphlets, &c., printed in British India, containing matter of the description above referred to or used for purposes of extortion, the Bill gives the Local Government a power to seize them and the presses at which they are printed.

'Newspapers and books published out of British India but circulated in British India remain. And in regard to them the Bill provides—

'*first*, that if they contain matter of the nature already referred to, or are used for purposes of extortion, the Local Government may seize them; and

'*secondly*, that the Governor General in Council may prohibit their importation altogether. The only other points calling for special notice are, that an appeal is given to the Governor General in Council against anything done by a Local Government or any inferior authority; that declarations of forfeiture and other proceedings under the Act are made final and conclusive, subject only to such appeal; and that penalties are provided for printing or publishing a newspaper without executing a bond or making a deposit after such bond or deposit has been required, and for breach of an undertaking to submit proofs to a Government officer.'

"I have said that, in restricting the operation of this measure to the vernacular Press, and in exempting the English Press from its operation, the Government of India are taking a course which involves a departure from the policy by which it is usually guided, and indeed from the policy which has been followed in all previous legislation regarding the Press in India. The restrictions which were imposed upon the Press previous to the passing of the Act of 1835, were imposed alike upon the English Press and upon

the vernacular Press. The Act, liberating the Press, which was passed in that year, was applicable alike to the vernacular and to the English Press; and when the freedom of the Press was for a time suspended during the Mutiny, the suspension was applied equally to English as to vernacular newspapers. Indeed, the first paper to which the provisions of the Act then passed were applied was the *Friend of India*, which had long been justly regarded as the leading and the most able English journal in India. When reporting the passing of the Press Law in 1857, Lord Canning's Government said that they had thought it right to make no distinction between the English and the Native Press, and that on this point they agreed with Sir Charles Metcalfe, who, in the course of the discussion of the Press question in 1835, wrote:—

"'I think that in all our legislation we ought to be very careful not to make invidious distinctions between European and Native subjects.'

"The despatch of 1857 goes on to say:—

"'We do not clearly see how any distinction of the sort could be really carried into effect; for there are more than one newspaper in the English language written, owned and published by Natives, almost exclusively for circulation amongst Native readers. And although we have no fear that treasonable matter would be designedly published in any English newspaper, we have to guard in these times against errors in discretion and temper, as well as against intentional sedition.'

"My Lord, I will not pretend to say that this part of the question is perfectly plain and simple, or that, in advising the course which we have determined on after very careful consideration, we are not laying ourselves open, in some degree at all events, to the charge of class legislation, and of making what by many will be regarded as an invidious distinction. It would have been very easy, but I do not think that it would have been just, to make the application of the Bill general, and, for the sake of not laying ourselves open to the charge of creating invidious distinctions, to include the English Press in its operation. My answer is that nearly forty-three years have elapsed since the passing of Sir Charles Metcalfe's Act, and nearly twenty-one years since the passing of the Press Law of 1857; that throughout that period the English Press has been, on the whole, a loyal and, notwithstanding many imperfections, a valuable instrument and aid to the Government; while for many years past, and especially in recent years, a section of the vernacular Press has been chiefly remarkable for its disloyalty. It must, moreover, be borne in mind that the publications of the vernacular Press are circulated among a class of the population far more ignorant than those classes which are reached by the English papers, and are therefore calculated to be much more

mischievous in their effects. Such publications as those to which I have alluded, appeal to the ignorant and the unenlightened. They influence and pervert the minds of the young, and go far to counteract the benefits of the education which we are endeavouring to impart to them. They constitute, in fact, a mischievous and poisonous literature, embarrassing to the administration, subversive of authority, and in every way injurious to those to whom it is addressed. In framing this measure in its present form, the Government of India has been influenced by a consideration of the facts with which it has to deal; and after carefully weighing those facts, it has come to the conclusion that it would not be right to inflict upon the most important and the most valuable section of the Press, a liability to checks and penalties which it has in no way merited. In connection with this question, we must not forget that the circumstances of the present time are very different from the circumstances of the time when the despatch of Lord Canning's Government was written. Then, a large part of the country was in a state of rebellion, and precautions were necessary, which are not needed in quieter times. Nor should it be overlooked that, in one important respect, this measure is free from the objection to which I have been alluding. Newspapers and other publications in the English language, published by Natives, are as much exempted from the operation of the Bill as are similar publications published by Englishmen. As a rule, all publications in the English language are addressed to, and are read by, a more educated class than are the readers of vernacular publications, and consequently, even if they were obnoxious to the same objections as characterize several of the vernacular papers, they would be far less mischievous. But, as a matter of fact, there is an essential distinction between the tone and language adopted by the most hostile of the English newspapers, and that adopted by the worst section of the vernacular Press. The vast majority of papers published in English, including those published by Natives, however violently they may attack men or measures, always attack them on their individual merits, treating them as accidental blots upon our system; whereas the vernacular papers too frequently treat the persons and the things which they denounce, as the types and necessary results of a foreign rule, and assail our system as a whole.

"My Lord, I have nearly completed the task which I undertook when your Lordship desired me to lay this Bill before the Council. I feel bound to say that it is not without sincere regret that I find myself engaged in the duty of actively promoting an enactment which, in the minds of many persons, will throw grave doubts on the value of the measures which have been taken for the advancement and diffusion of education among the

Natives of this country. I do not share in those doubts. My conviction is that the more steadily we persevere in our exertions for the promotion of sound education, the more surely we shall counteract evils of the nature of those against which this Bill is directed; and I trust that, both in making those exertions and in repressing those evils, the Government will receive the co-operation of the respectable and well-disposed classes of the Native community. Our earnest hope is that the mere existence of this law will in itself suffice, or will in a great measure suffice, to repress the mischief against which it is aimed, and that the actual enforcement of its provisions will be a thing of very rare occurrence. As Englishmen, brought up in a free country and accustomed to the advantages of a free Press, the Members of the Government of India have no desire to place undue restrictions on the Press of India. In resolving on this measure, they are entirely influenced by their sense of the necessities of the case, and of the responsibility which devolves upon them for the maintenance of authority and order; and I believe that the Council and the public generally will agree with me when I say, that it is better that a measure of this nature, which is essentially a measure of precaution, should be introduced at a time when the country is peaceful and undisturbed, and when the minds of men are calm, than that it should be postponed to some period of disturbance, when it would be attributed to panic, and when it might be necessary to make its provisions more stringent, and possibly more comprehensive.

"And now, my Lord, one word as to the reasons which have induced the Government to adopt the unusual, though not unprecedented, course of introducing this Bill without the customary notice, and of recommending that it should be passed through all its stages at a single sitting of the Council. We consider that to have dealt with this question in the manner in which projects of law are ordinarily dealt with, would have been inexpedient, on the ground that it might have given rise to agitation, and during the period which would have been occupied in passing the Bill, might not improbably have intensified the evils which the measure is intended to repress."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT then introduced the Bill.

The Hon'ble SIR ALEXANDER ARBUTHNOT having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The PRESIDENT declared the Rules suspended.

The Hon'ble SIR ALEXANDER ARBUTHNOT then moved that the Bill be taken into consideration.

The Hon'ble MR. MORGAN said:—"My Lord, as the provisions of the Bill now before the Council have not been published, it has of course been impossible to obtain any idea of the manner in which it may be received by the non-official public, of which I am to a certain extent a representative. Anything that I may say, therefore, must be considered only as a non-official view of the Bill as far as I myself am concerned, and indeed as regards the details of the Bill, they have only been before the Members of this Council, other than the Executive, so recently, that I cannot pretend to enter into any discussion of them. As to the general principle of the Bill, however, I think, after what has fallen from the Hon'ble Mover, that necessity has been shown for legislation in the direction now proposed. Although it would be highly undesirable that any check should be placed upon fair discussion or reasonable criticism either of Government measures or the acts of individual officers, the Bill now before the Council does not, as far as I understand, propose to place any such check. The papers which will come under the operation of the Bill, as far as I can judge from such extracts as have come to my notice, do not attempt to discuss or criticise either men or measures, but are made up of monstrous statements and virulent invective; statements so monstrous that, in the mind of an educated reader, they would only raise a smile or provoke disgust. To the class, however, to whom these papers are read, the mere fact of the statements being in print conveys a belief that they are true, and it therefore appears necessary that a check should be placed upon their indiscriminate dissemination.

"Under these circumstances, I have pleasure in supporting the Bill, the general provisions of which appear suited to the object in view."

The Hon'ble MR. PAUL said:—"My Lord, as I intend to vote in favour of the measure which at the present time engages the attention of this Council, I venture to make a few remarks in reference to it, and in support of the propriety of subjecting newspapers published in the Oriental languages to summary control by competent authority. It may be readily admitted that it would be unjust to interfere with or retard social progress and mental improvement, depending in some measure on the diffusion of knowledge through the medium of vernacular newspapers, by closing or interrupting such channels of thought and instruction under legislative sanction. But a cursory study of the provisions of the Bill will show that this is not the intention of the Legislature. A broad distinction exists—and has been recognized in the Bill—between publications honestly conducted and devoted to useful and beneficial objects and those

which have mischievous and misleading tendencies and abound in calumnies; and this distinction should be observed in order to correct any misconception which may arise as to any supposed intention on the part of this Legislature either to interfere with the liberty of the Press or to stifle free discussion. It will, I think, be acknowledged with equal readiness that this Government has been pre-eminently distinguished by its steady and unceasing labours in the cause of education and the enlightenment of the people, and that its administration has assured to all classes security of property and the full enjoyment of personal liberty. In the face of these exertions and benefits, it will be idle to suggest the possible existence of any unworthy motive for the introduction of the present measure, which circumstances of a deplorable nature have forced upon the Government. I may take it as axiomatic that it is necessarily incident to every permanent system of government to make provision, not only for its continuance, but for its secure continuance. As the good-will and esteem of the people are indispensable to such continuing security, it is evident that it is proper to prohibit and restrict all malicious attempts to produce disaffection by creating and fostering ill-will and discontent on the part of the governed, and by rendering the Government itself odious to the people. And here, my Lord, before proceeding further, I may be permitted to read, as germane to the subject, a passage from an accomplished and learned author:—

"'The State and Constitution being the common inheritance, every attack made upon them, which affects their permanence and security, is in a degree an attack upon every individual, and concerns the rights of all. It is, therefore, a maxim of the law of England, flowing by natural consequence and easy deduction from the great principle of self-defence, to consider as libels and misdemeanours every species of attack by speaking or writing, the object of which is wantonly to defame, or indecorously to calumniate, that economy, order and constitution of things which make up the general system of the law and government of the country. Opinion is strength, and the good fame of government is necessary to obtain this opinion. The distance is not very great between contempt of the laws and open resistance to them. Defamation of this kind is more dangerous, inasmuch as it appeals to the passions, rather than to the reason, of the multitude; it unsettles the minds of the people, relaxes the authority of the rulers, and impairs the reverence due to the laws.'

"Many of these observations apply with redoubled force to a government which rules over an immense and mixed population composed of persons of different races and religions, of different habits and characters, whose allegiance cannot but materially depend on their general good opinion of, their good-will and respect for, that Government. The privilege of writing and publishing with freedom is doubtless inestimable. So long as that privilege is exercised honestly and fairly, with a view to benefit society, and with reference to subjects of common and public interest, it will be cherished and maintained wherever

free institutions exist and flourish. But the privilege itself is subject to this limitation, that it must not invade the undoubted rights of others. In the case of private individuals and classes, their character and reputation must be respected; and in the case of a Government, its constitution must not be wantonly attacked for purposes of injury and mischief, nor its good name maliciously aspersed. The principle of protecting character is ancient, it having been declared by the laws of Solon 'that the liberty of the citizen would be imperfect were his character unprotected.'

"Having made these general observations, I now turn to the causes which have led to the introduction of the Bill. I have in my hand translations of upwards of one hundred and fifty extracts from papers published in the vernacular languages, which I have read carefully, and that reading has satisfied me that these publications contain matter falling under the following heads:—

1. Seditious libels, malicious and calumnious attacks on the Government, accusing it of robbery, oppression and dishonesty, and imputing to it bad faith, injustice and partiality.

2. Libels on Government officers.

3. Contemptuous observations on the administration of justice, pointing to its alleged impurity and worthlessness.

4. Libels on the character of Europeans, attributing to them falsehood, deceit, cruelty, and heartlessness.

5. Libels on Christians and Christian Governments, and mischievous tendencies to excite race and religious antipathies.

6. Suggestions and insinuations which their authors believe fall short of seditious libels by reason of the absence of positive declarations.

"In addition to these general characteristics, I find that mis-statements, exaggerations, and allegorical tales, intended to sketch real incidents, but based purely on imagination, have been introduced to support or give colour to the varied (and I might almost add inexhaustible) calumnies to be met with. Other prominent features must not be lost sight of, such as bestowing praise on the late Muhammadan rule, maintaining its superiority over British rule, representing the dominant race as debased, demoralised and ignorant. I cannot resist the temptation of reading a specimen of inflated conception of Native excellence. 'Are there not thousands of educated Natives before whose intelligence, judgment, courage, justice and moral conduct the abilities of the best

civilians fall into insignificance, like the gleams of a candle before the resplendency of the Sun!'

"Having attentively considered these extracts, I am irresistibly led to the conclusion that it is intended by these publications to disseminate disaffection, to excite evil prejudices, to stir up discontent, and to produce mischief of the gravest order; in short, to render the Government, its officers, and Europeans generally, hateful to the people. These are evil purposes, which should be repressed with a strong hand, and their contrivers restrained from all further attempts to administer their subtle poison to the lower orders of the people, to saturate their minds with evil thoughts, and to arouse their evil passions. The moral atmosphere, surcharged with threatening clouds, and tainted by these vicious productions, must be restored to its natural and normal purity.

"The evils to which I have adverted are, I fear, too wide-spread to be checked or suppressed by prosecutions under the existing law; and even if it be assumed that prosecutions would be effective in repressing them, it must be admitted that much time would be lost in applying such remedy and realizing its salutary results. As time is of the very essence of every remedy by prevention and restraint, I am entitled to assert that prosecutions for all practical purposes will be found unavailing. It follows, then, that in conformity to the principles I have enunciated, this Legislature is under the necessity of making provision for the better protection and security of Government and for the public welfare in a manner suited to the emergency, so that the remedy may be summary and its application immediate. The Bill before us contains provisions which I think are well calculated to supply the desired remedy; and I maintain that the time has fairly arrived for action—further forbearance may be fraught with danger.' It may probably be alleged that the provisions of the Bill are stringent; but I consider that the means to be used for the suppression and extinction of the evil courses to which the newspapers under notice have resorted should be as powerful and as effective as if the Government were called upon to deal with a plague, a pestilence, or other grievous calamity. In the course of my professional career, I have been a zealous and unflinching advocate of the freedom of the Press; and I have the satisfaction of believing that, in according my support to the present Bill, I am, in no way, departing from a firm adherence to the true principles which regulate that freedom. To protect and encourage journalism conducted with ordinary care and for honest purposes might be deemed a privilege. To curb by reasonable and necessary means the unbridled license of obnoxious and degraded publications which seek to spread disaffection and dissatisfaction,—and which may be used by wicked and designing men to produce discontent amongst the poor and ignorant to their own detri-

ment—and to denounce them fearlessly, should be considered by every right thinking man and by every true citizen an imperative public duty."

The Hon'ble MR. EVANS said:—"My Lord, I should always view with great jealousy any restraint upon personal liberty and freedom of speech which did not appear to be necessary for the safety or well-being of the community, but I give my unqualified assent to this Bill, stringent as its provisions are; for I think it is necessary under the existing state of things. No person can claim to have any right to follow the trade or calling of spreading disaffection or extorting money, for these are admittedly crimes. The only question is, whether it is necessary to arm the executive with special powers for the prevention of this class of crime, instead of leaving it to be punished through the agency of the ordinary Courts of Justice. The main evil to be provided against is this. An unceasing stream of false and malicious charges is being daily poured out by the vernacular Press against the English Government and the English race. The poor and ignorant millions are told that all their misfortunes are due to England and the English, who cruelly and heartlessly oppress them, and the prospect of better days is held out to them if they could only be quit of their oppressors. My Lord, the condition of the toiling masses is in every country one involving much hardship. But their lot is bearable as long as they believe the comparative hardship of it to be due to natural causes beyond their control, and to the condition of the world they live in. Hard and toilsome though their lives be, they may still be loyal as long as they believe that their governors have their interests at heart and desire to deal justly by them. But when these poor ignorant and credulous masses have it daily dinned into their ears that all the evils of life, even their very poverty, are due to the heartless rapacity and injustice of an alien race of oppressors, they cannot but come to believe the oft-told tale; for they are but children with no means of judging for themselves as regards matters outside their daily life. When once they come to believe this, their lot becomes intolerable in their own eyes. A prospect of ease and contentment as of the Golden Age is before them, and nothing stands between them and their happy future except the hateful English race. Thus their minds are poisoned and their contentment destroyed, and they are left ready tools for plotters and conspirators. Of the power of the Indian Government to deal sternly and effectually with any attempts at rebellion I entertain no doubt and feel no fear. But I do feel that it would be a cruel policy to allow these poor and ignorant people to be goaded to rebellion, confident in our power to slay them, should they yield to the temptation. The object of the proposed Bill is to prevent the dissemination of the poison of disaffection—a subtle poison which, like the seeds of disease, floats in the air and

is communicated from man to man, by placing the centres of infection under control.

"This object cannot be obtained by prosecution in the ordinary Courts. Moreover, a prosecution by its publicity disseminates the poison. If it were necessary to destroy clothes infected with the plague, no sane man would ask that they should be brought into a crowded public Court to have the question of their infectiousness tried.

"Great liberty of speech is conceded to prisoners and their advocates, and they are allowed to use any arguments which they choose in their defence; and these reports of trials are by our law specially privileged and may be printed with impunity. It is right that this should be so; but it is one of the reasons which render a public prosecution an undesirable method of dealing with these cases, for in punishing the prisoner, you disseminate the poison. When special evils like this have to be dealt with, it seems wiser to meet them by special legislation than to alter the general criminal law or procedure. I do not think this Bill can fairly be objected to as class legislation. Publications in English are not subject to its provisions. Publications in the vernacular are. The reason is that English is in India, to some extent, a learned language, and a knowledge of it represents some amount of education. When Latin was the language of the learned in England and the rest of Europe, it was thought no harm to print classical works containing the praises of the Republican form of government as the best possible, and little exception could have been taken to a learned treatise upholding that view. But had any one published a treatise in the vulgar tongue informing the masses that they would be happier if they substituted that form of government for the one they lived under, he would have been speedily laid by the heels. Publications in English do not reach that class which is ignorant and credulous enough to be injured by the sort of stuff extracts from which have been read to us to-day.

"Even had there been no special urgency, I should have been glad to see prompt measures taken to abate the evil. That there is special urgency at present from the disturbed state of the political horizon and the agitation of men's minds by wars and rumours of wars, and from the increased activity of the sedition-mongers, no one can deny. That urgency has seemed to the Executive Government sufficient to warrant them in asking the Council to pass the Bill at once. Believing that the evil is great, and the necessity for its immediate abatement urgent, and that the remedy proposed is the right one, I have no hesitation in voting for the Bill."

The Hon'ble MR. THORNTON said:—"Although in common with other Members of this Council I have not forgotten that I am an Englishman, and, in common with Englishmen, regard the free press of England as an inestimable benefit; and although I have given proof of the sincerity of my professions in having been instrumental, in 1865, in withdrawing the censorship which had been maintained since 1857 over the vernacular press of the Panjáb, I am not the less sensible of the necessity for the legislation we are now considering. For some time past I have become painfully conscious, as indeed almost all who have had experience in district and provincial administration must be, of the increasingly seditious tone of certain of the vernacular newspapers, and of the grave evil resulting from the dissemination of their disloyal and libellous productions among the ignorant populations of India.

"It is therefore my very decided conviction that, whatever may be the case in countries or amongst peoples differently circumstanced, the security of this Empire demands that the Executive Government shall be vested with complete power for promptly repressing and preventing the circulation of disloyal and seditious vernacular publications.

"And, my Lord, I am the more disposed to assent to the exercise of this controlling power by the Executive Governments of India in the present case because, so far as my local knowledge extends, I can confidently assert that the writers or editors of the disloyal articles of which we complain no more represent the real feelings of the people of India than Dr. Kenealy may be said to represent the true sentiments of Englishmen. My experience is to the effect that they are for the most part disappointed ex-employés of the Government, broken-down vakíls, disappointed candidates for Government service, or ex eléves of Government institutions, who, after having been educated by the State at an enormous cost, are indignant because, at the close of their academical career, they have not been presented *instanter* with a lucrative Government appointment. But, it may be argued, if such is the case, if the disloyal effusions of which complaint is made do not represent the real feelings of the people, why care about them? To these arguments the answer is, that there is such a thing as undermining a sound structure; and this process of undermining the loyalty of our ignorant and very impressionable populations has been long going on in several parts of India, and is beginning now to have effect in that very loyal part of Northern India of which I have personal knowledge.

"Then I have heard it said, why does not the Government, instead of resorting to the strong measure of introducing a Press law, endeavour to counteract the effects of seditious writings by contradicting their mis-state-

ments, or by establishing or inspiring organs of its own to proclaim the benefits and advantages of British rule? To this it may be replied, that in newspaper warfare, unlike the situation at Plevna, the power of offence is immeasurably greater than the power of defence. Moreover, in such warfare there is no convention against the use of unfair weapons, and writers of the class we are considering do not hesitate to resort to weapons of attack which no Government, nor indeed any writer of respectability, would deign to use. Then, again, these writers derive much of their popularity and influence by adopting a ribald tone and piquancy of style which would be wholly inappropriate in any journal of the higher class; in a word, it would be as impossible to counteract the pungent sedition of some of our Native newspapers by utterances in official or non-official *Moniteurs*, as to counteract the effects of spicy paragraphs in *Vanity Fair* by dignified sentences in the *Standard* or the *Morning Post*.

"But lastly, it will doubtless be urged—supposing all this to be true, why not make use of the ordinary tribunals, and prosecute the offending papers under the existing law of treason or of libel? This question has been so fully discussed by the Hon'ble the Mover and the learned gentlemen who followed him, that I need do no more than repeat that it is obvious that by launching State prosecutions against offending editors, the Government would be giving increased publicity and importance to the very publications it is desired on public grounds to stifle and destroy. No; in the case of the rank poison with which we are dealing, as in many other cases, prevention is far, is infinitely, better than cure.

"In these circumstances I have no hesitation in according my full support to the measure before the Council, and I accord that support in the confident assurance that the powers conferred will be used with justice and moderation, that they will never be used for the repression of full and free discussion of the measures of Government or the conduct of its officials, but only of those publications which, in the language of the preamble of the Bill, 'contain matter likely to create disaffection to the Government or antipathy between persons of different castes, religions or sects in British India, or have been used as a means of intimidation and extortion.' Under ordinary circumstances I should have been disposed to complain of the shortness of the notice given to the Additional Members of Council of the intention to bring forward this important measure and the short time allowed for its consideration; but under all the circumstances of the present case, I recognise the necessity for prompt action, and the difficulty of giving longer intimation of the 'provisions of the Bill."

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said :—"My Lord, as an advocate of the liberty of the Press, and as one who would not like to see any restrictions put upon it, I cannot but express my great regret that some of the low-class vernacular papers have taken to a course which, to say the least, is extremely reprehensible. I must take this opportunity most emphatically to repudiate, on the part of the educated Natives of India, all sympathy with such writers, who, from whatever motive, attempt to excite something like a feeling of disaffection against British Rule. The educated Natives do not even know of the existence of most of these newspapers. It is, however, I believe, a known fact that much of this class of writing proceeds from folly and a spirit of braggadocio rather than anything else. Yet that some sort of check should be put upon this abuse of the liberty of the Press I cannot deny; but whether the provisions of the existing laws are not sufficient for the purpose, is what I am not in a position to judge. Those who are responsible for the good government of the country seem to think that, considering present circumstances, they are not. For this reason, without giving any opinion regarding the detailed provisions of the Bill just placed before us, I deem it my duty to give my humble support to the action of Government, the more so as it is not likely to affect the better class of our journals."

The Hon'ble MR. COLVIN said :—"My Lord, I am unwilling to prolong the proceedings of to-day's meeting unnecessarily, but I do not wish to give an altogether silent vote in favour of the measure under consideration. The Native Press has perhaps nowhere allowed itself greater license than in that part of the country in which I have been employed, and no one can hold a stronger opinion than I do in favour of the necessity of placing some restraint upon the uncontrolled liberty which it now abuses. A portion of that Press has hitherto applied its powers to little beyond inculcating hatred and distrust of the existing Government, to fostering class animosities, and to attacking (often, I fear, from no very worthy motives) public and private individuals. It is fortunate that its influence is not equal to its ill-will, as the number of people who read newspapers in the North-Western Provinces is still very small. But its power is likely to grow, and there is this peculiar evil attached to it, that instead of representing any existing public opinion, the vernacular Press, so far as it goes, tends to create one, and that, an opinion which is as hostile as can be to the Government and the ruling class in the country. The conviction that some check is required, which has been so generally expressed here to-day, is shared by many in those Provinces, and, speaking from my own personal knowledge, I am confident that the measure now proposed will be cordially and generally approved by a large majority of those who are responsible for preserving tran-

quillity and contentment in that part of the country. Nor do I believe that it will be disliked by any but a few needy and discontented men whose occupation will be gone when they can no longer libel and threaten with impunity."

His Honour THE LIEUTENANT-GOVERNOR said:—

"MY LORD,—The subject before the Council appears to me to be one regarding which there is very little to be said; for it is a matter regarding the merits of which I can conceive the existence of no two opinions. What there was to say has been so ably and logically said that I find myself with but little to add, like my hon'ble friend Mr. Colvin. However, I feel that I ought not to give a silent vote in respect to the passing into law of a measure such as that before the Council, and this the more from the fact that I have had occasion to bring before the Government of India instances of the licentiousness and sedition of the vernacular Press, and to urge the necessity of bringing that Press under control, and making it powerless for mischief.

"The evil has long been felt by the Government of Bengal, and I believe by nearly all the other Local Governments. My predecessor, Sir G. Campbell, very strongly stated on several occasions his conviction that measures for controlling the vernacular Press were called for.

"I can very plainly foresee the misrepresentation and abuse to which the Government of India exposes itself by its determination to deal with this question in a bold and unflinching spirit, and I therefore desire, as a Member of this Council, to take upon myself my full share of responsibility for the measure.

"An attempt has been made by several very unscrupulous members of the Native Press to mislead the people into the belief that what Government desires to check is, not sedition, but fair criticism of public men.

"This is an assertion which I most emphatically deny and repudiate. What Government does object to is the sedition and gross disloyalty of some of the vernacular papers, and their attempts to sow the seeds of disaffection to the British rule in the minds of ignorant people.

"There have been laid before the Government extracts from the vernacular papers which establish the constant use of language of this description, and show that they habitually attack and misrepresent the Government under which they live in peace and prosperity in terms intended to weaken the authority of Government, and with a reckless disregard of truth and fact which would not be tolerated in any country in the world. The writings to which I allude have nothing to do with personal attacks. The personal

abuse, the falsehoods, the scurrility and the exaggerations which are applied to individual officers may well, as heretofore, be left to the ordinary action of the law courts, or be treated with the contempt they deserve. But it has been prominently stated that even this practical irresponsibility for personal abuse is a public mischief, and is used for the purpose of extorting money or frightening timid subordinates from a proper discharge of their duties. But it is not on this ground that I desire to support this measure. What I do recognise, and long have recognised, as a fact, is, that the licentiousness of the Press has, under false ideas of freedom and independence, been allowed to reach a stage which promptly calls, in the interests of the public at large, for the interference of the Legislature.

"I entirely agree with the Hon'ble Mover of the Bill in thinking that the whole of the vernacular Press is not open to these charges. I believe with him that there are many such papers conducted by respectable men on excellent principles; but the law proposed cannot injure them. If papers do not write sedition, or endeavour to incite disaffection towards the Government, or endeavour to extort money by intimidation, their position will be no worse when this Bill has become law than it was before. If they do publish matter of this objectionable character, then it is the plain duty of Government to interfere with them in the interests of the public, and I am sure that the public will have no sympathy with them.

"I can quite understand that the Government of India has, as the Hon'ble Mover of the Bill has stated, felt some difficulty in applying a measure of this sort to a portion of the Press and exempting another portion. But the difficulty, it seems to me, is imaginary rather than real. The papers published in this country in the English language are written by a class of writers for a class of readers whose education and interests would make them naturally intolerant of sedition; they are written under a sense of responsibility and under a restraint of public opinion which do not and cannot exist in the case of the ordinary Native newspapers. It is quite easy and practicable to draw a distinction between papers published in English and papers published in the vernacular, and it is a distinction which really meets all the requirements of the case, and should not be disregarded merely because some evil-disposed persons may choose to say that Government has desired to show undue favour to papers written in the language of the ruling power.

"The Press must be treated on its own merits. Had the English Press of India been in style and tone what it was twenty years ago, I for my part should have had no hesitation in voting for its inclusion in the present Bill. But I know

nothing that has improved more of late years than the tone of the Anglo-Indian Press. It no doubt attacks Government measures and Government officials, and often very undeservedly; but, as I have said before, it is not this sort of criticism to which Government objects or desires to control. On the whole, the English Press of India, whether conducted by Europeans or Natives, bears evidence of being influenced by a proper sense of responsibility and by a general desire to discuss public events in a moderate and reasonable spirit. There is no occasion to subject that Press to restraint, and therefore, naturally enough, it is exempted. It would be a sign of great weakness on the part of Government to bring it within the scope of this measure merely to meet a possible charge of partiality. If it should ever happen that the Anglo-Indian Press should adopt a tone calculated to excite feelings of disaffection to the British rule, I shall be amongst the first to ask for its inclusion in a law of this sort.

"My Lord, I will not take up the time of the Council any further. I have never lost an opportunity of stating my opinion on the subject we are now discussing, and I hope that I have explained with sufficient distinctness the grounds upon which my opinions are based. But even if I did not entertain these opinions as strongly as I do, I should consider it my duty, when told by Your Excellency, as Head of the Executive Government, that on full and calm consideration it had been determined that a measure of this sort was necessary for the maintenance of peace and order, to give it my hearty support."

The Hon'ble SIR JOHN STRACHEY said:—"My Lord, I have a special reason for wishing to add a few observations of my own to those that have already been made on the Bill before the Council. Not long ago I was Lieutenant-Governor of one of the great Provinces of India, and some years previously the government of another Province was entrusted to me. The questions which are dealt with in this Bill have consequently been frequently brought home to me in a very practical shape. I have had to look on powerlessly at the mischief that has been going on, and have deplored the neglect with which it has been treated by the Government. I have known that this neglect has not been caused by indifference, but by the natural disinclination, which happily all Englishmen feel, to do anything which shall have even the appearance of interfering with the liberty of the Press, and if I myself now thought that this Bill was really open to such a charge, I should have been unable to give it my support.

"I deny that this measure will infringe that liberty. Liberty of the Press means liberty of discussion, liberty for the free expression of thought and opinion. But liberty does not mean unbridled license; it does not mean

unlimited permission to let loose on the land a never-ending stream of abuse of all the institutions by aid of which society is held together; abuse of those things respect for which is indispensable for the preservation of the lives and property of every one; abuse of the Government, of the administration of justice, of the whole English race, and of all it does or desires to do. Respect for the liberty of the Press does not require that we should permit the writers of these scurrilous pages, which it is a misuse of language to call newspapers, to go on constantly telling the loyal and honest, but ignorant, people of India such things as those of which we have heard examples to-day. That Englishmen 'have the privilege of killing Natives with impunity;' that they are 'more mischievous to the Natives than snakes, and kill them with as much indifference as one kills a reptile;' that 'pimping is the only calling which the British Government does not yet practise;' that we have robbed the Chiefs of India of everything but the clothes they wear, and that the time is close at hand when this vile race, which has lost its courage and its military power, will have nothing left to them, but to abandon India to the victorious Russians, and flee for their lives. Nor does respect for the liberty of the Press require that we should allow blackmail to be levied on Native Princes and ladies, and on honourable Native gentlemen, who must pay the demands of these men or be held up to public infamy. Without dwelling on the political mischief caused by the calumnious and seditious language which constitutes a main staple of some of those productions of the Native Press against which the present Bill is directed, it seems to me clear that there is precisely the same justification for a law which shall prevent these abuses, as there is for laws against obscene publications, or against defamatory and seditious and obscene public dramatic performances.

"It has been proved by long experience that the existing law is altogether insufficient to supply the necessary check on these productions, and if there were no other reasons, public decency alone would require that such things should be stopped. I believe there is no country in the world where they would be tolerated. Among communities with a more advanced civilisation, legal enactments are hardly necessary for their prevention. Public opinion either makes them impossible, or at once brings upon their authors a just condemnation which goes far to render them harmless. Here, unfortunately, it is different. A small class of corrupt and malignant writers exists in India, as elsewhere, for no country is free from these pests of society, and there is here no compensating power of healthy public opinion to check their excesses. The honest journalist has nothing to fear from the present measure. He will be as free as he has ever been, to give expression to his opinions, to discuss the

action of the Government and its officers, to advocate those measures and doctrines of which he approves, and to censure those that he condemns. The limitations under which he may do this will, in no respect, differ from those that apply in England. I cannot describe those limitations better than by quoting the words in which a distinguished English Judge stated the law on this subject a few years ago:

"'The public journalist,' he said, 'is entitled to canvass the acts, the conduct and the intentions of those who may be entrusted from time to time with the administration of the Government by the Crown.

'He is entitled to canvass and, if necessary, to censure those acts. He is entitled to comment on, canvass and, if necessary, censure the proceedings of Parliament. He is entitled to criticise and condemn the acts of public men. He is entitled to point out any grievances which he may think the people labour under, and argue for their removal, and suggest what remedies may occur to him for the purpose. He is entitled not only to publish, but to comment on, to criticise, and, if necessary, to condemn, the conduct of Judges and their decisions; nay more, even the verdict of juries are not exempt from fair and reasonable criticism. * * * * I have told you within what limits a journalist may exercise his opinion and his talents; but I should tell you also the things which he is not permitted by law to do. He must respect the existence of the form of Government under which he enjoys and exercises those very extensive rights and privileges to which I have referred. A public journalist must not, either covertly or openly, devote the pages of his journal to overthrow the Government. * * He must not sow disaffection and discontent generally throughout the land. * * He may, as I said, comment on the acts of the Government, and criticise them severely; he may, as I said, canvass and criticise proceedings in Courts of Justice, and the conduct and demeanour of the Judges who preside; but he must not devote his journal to the purpose of bringing the administration of the law generally into contempt, and exciting the hatred of the people against the law; neither can he legally devote the pages of his journal to excite animosities between different classes of Her Majesty's subjects.'

"These are the principles by which the British Government desires to be guided in this country also. They are the principles by which its action has been guided in the past, and by which it will continue to be guided in its relations with the Native Press, should the measure now before this Council become law.

"It is a cause of regret to the Government that any such change of system as that now proposed should be rendered necessary by the circumstances of this country. But it is obvious that more must be left in India to the Executive Government, and less to the restraining power of public opinion, or of the Judicial Courts, than would be right in England. In the present instance, as in many others, a restraining power supported by a legal sanction may be found necessary by the Executive Government, though the fact of that power existing may not improbably act so as to prevent its being put into operation.

"There is no danger in these days that an English Government will fail to act in accordance with the principles of the English law which I have stated; or that it will apply in a harsh or illiberal manner the powers with which it is now proposed to invest it. If the principles and the practice of the Government be thus regulated, it will be impossible for any one to say that any infringement has been made in the legitimate liberty of the Press. But while I affirm this, I wish also to add that the Government on its part can tolerate no infringement of its legitimate authority. To us has been entrusted the guardianship of British supremacy in India, and we are resolved to transmit that trust unimpaired to those who follow us."

The Motion was put and agreed to.

The Hon'ble MR. STOKES said that it appeared from the preamble that one of the objects of this measure was to prevent the use of the so-called Native newspapers as a means of intimidation, and section 3 accordingly empowered the Magistrate to call upon the printer and publisher of any such newspaper to give a bond not to 'use or attempt to use such newspaper for the purpose of putting any person in fear or causing annoyance to him and thereby inducing him to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, or to give any gratification to any person.'

But it had just been pointed out to him that this did not provide for what he believed was the common offence of misusing such newspapers for the purpose of intimidating public servants from discharging their public duties. The Penal Code, section 189, provided for punishing such offences when committed. The Bill should provide, as best it could, for preventing their commission without any judicial proceeding.

MR. STOKES therefore begged leave to move that the following be added to clause (*b*) of section 3:—

"or for the purpose of holding out any threat of injury to a public servant, or to any person in whom they or he believe or believes that public servant to be interested, and thereby inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of his public functions."

The Hon'ble MR. PAUL remarked that this amendment had taken him by surprise, no opportunity having been afforded for the consideration of the provision which was now proposed, and under the circumstances he was not prepared to vote on the motion one way or the other.

His Honour THE LIEUTENANT-GOVERNOR observed that he was responsible for the amendment which had been proposed. He had brought to the notice of the Hon'ble Mover of that amendment what he conceived to be an omission in the Bill. The amendment before the Council was in respect of a matter regarding which many complaints had been received, and for which no provision had been made. He considered that exactly the same difficulties which applied to prosecutions for extortion in relation to private individuals would apply to prosecutions for offences of the character to which the amendment would apply, and if it was considered desirable to restrain the vernacular Press from making scandalous aspersions on the character of private individuals with a view of extorting money, he thought it was equally desirable to protect public officers in a similar manner from intimidation and threats in respect to the performance of their public duties. It was as inexpedient to leave the matter to be dealt with in the ordinary Courts in the one case as in the other.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill as amended be passed. He said—"I am sure that Your Lordship and every Member of the Executive Government will have been gratified at the reception which the Bill has met with from the Council. There is only one point in connection with the discussion which has just taken place, regarding which I entertain any regret. I could wish that more of our Native colleagues had been present to take part in the debate; but I feel bound to say that we are greatly indebted to the one Native Member of the Council who has been able to be present, for his sensible and loyal remarks on the subject of the Bill. I feel sure that the observations which the Mahárájá Jotíndra Mohan Tagore has made, will go forth to his countrymen—and especially to the educated portion of his countrymen—with considerable effect, and will exercise a most valuable influence on the discussions which we must expect to take place on this Bill. As my hon'ble friend, the Lieutenant-Governor, remarked, I have no doubt that the Government will not

escape attacks on the measure to which it has felt it its duty to resort; but I do not apprehend that in those attacks there will be a single word which will induce any Member of this Council to regret the part which he has taken in voting for and supporting the measure. After the very forcible arguments which have been advanced by my hon'ble colleague the Advocate-General; after the clear and lucid manner in which the points of the case and the arguments have been stated by my hon'ble friend Mr. Evans, and after the results of their practical experience given by Mr. Thornton, Mr. Colvin, the Lieutenant-Governor and Sir John Strachey, I think that we may allow this measure to go forth to the public with undiminished confidence, and with a sanguine hope that it will be received by the intelligent portion of the public, both in this country and in England, and also in those other parts of the world in which matters connected with India receive any sort of interest, as a measure which the Government was justified in passing, and in fact was bound to pass."

His Excellency THE PRESIDENT said :—

"After the exhaustive manner in which this measure has now been discussed, the clear and temperate statement of my hon'ble colleague who introduced it, and the able speeches we have heard from those Hon'ble Members who succeeded him, I find that I have but little need to trouble the Council with any additional remarks. It would not, however, become me to obscure my responsibility for a measure of this extreme importance by giving it a silent vote; and I must, therefore, make a further claim on the attention of the Council.

"I cannot but regret the necessity which, by some irony of fate, has imposed upon me the duty of undertaking legislation for the purpose of putting restrictions on a portion of the Press of this country. By association, by temperament, by conviction, I should naturally find my place on the side of those to whom the free utterance of thought and opinion is an inherited instinct and a national birthright. I should have rejoiced had it fallen to my lot to be able to enlarge, rather than restrict, the liberty of the Press in India; for neither the existence, nor the freedom, of the Press in this country is of Native origin or growth. It is an exotic which especially claims and needs, from the hands that planted it in a foreign soil and clime, protecting shelter and fostering care. It is one of the many peculiarly British institutions which British rule has bestowed upon a population to whom it was previously unknown, in the belief that it will eventually prove beneficial to the people of India, by gradually developing in their character those qualities which have rendered it beneficial to our own countrymen. For this reason, the

British rulers of India have always, and rightly, regarded with exceptional tolerance the occasional misuse of an instrument confided to unpractised hands. But all the more is it incumbent on the Government of India to take due care that the gift for which it is responsible shall not become a curse, instead of a blessing, a stone, instead of bread, to its recipients.

"Under a deep sense of this great responsibility, I say distinctly, and without hesitation, that, in my deliberate and sincere conviction, the present measure is imperatively called for by that supreme law—the safety of the State.

"We have endeavoured to base our rule in India on justice, uprightness, progressive enlightenment and good government, as these are understood in England; and it is at least a plausible postulate, which at first sight appears to be a sound one, that, so long as these are the characteristics of our rule, we need fear no disaffection on the part of the masses.

"It must, however, be remembered that the problem undertaken by the British rulers of India—(a political problem more perplexing in its conditions, and, as regards the results of its solution, more far-reaching, than any which, since the dissolution of the Pax Romana, has been undertaken by a conquering race)—is the application of the most refined principles of European government, and some of the most artificial institutions of European society, to a vast oriental population, in whose history, habits, and traditions they have had no previous existence. Such phrases as 'Religious toleration,' 'Liberty of the Press,' 'Personal freedom of the subject,' 'Social supremacy of the Law,' and others, which in England have long been the mere catch-words of ideas common to the whole race, and deeply impressed upon its character by all the events of its history, and all the most cherished recollections of its earlier life, are here, in India, to the vast mass of our Native subjects, the mysterious formulas of a foreign, and more or less uncongenial, system of administration, which is scarcely, if at all, intelligible to the greater number of those for whose benefit it is maintained. It is a fact which, when I first came to India, was strongly impressed on my attention by one of India's wisest and most thoughtful administrators,—it is a fact which there is no disguising, and it is also one which cannot be too constantly, or too anxiously, recognised, that by enforcing these principles, and establishing these institutions, we have placed, and must permanently maintain, ourselves at the head of a gradual, but gigantic, revolution; the greatest and most momentous social, moral and religious, as well as political, revolution which, perhaps, the world has ever witnessed. Now, if the public interpreters and critics of our action were only European

journalists, capable of understanding and criticising it from a European point of view, in reference to the known principles of European polity, and in accordance with the commonly accepted rules of European reasoning, then, I think, we might rationally anticipate nothing but ultimate advantage to the country, as well as to its Government, from the unrestricted expression of their opinion, however severely they might criticise, from time to time, this or that particular detail in the action of this or that particular administration. But this is not the case as regards those journals which are published in the vernacular languages. Written, for the most part, by persons very imperfectly educated, and altogether inexperienced; written, moreover, down to the level of the lowest intelligence, and with an undisguised appeal to the most disloyal sentiments and mischievous passions; these journals are read only, or chiefly, by persons still more ignorant, still more uneducated, still more inexperienced, than the writers of them; persons wholly unable to judge for themselves, and entirely dependent for their interpretation of our action upon these self-constituted and incompetent teachers. Not content with misrepresenting the Government and maligning the character of the ruling race in every possible way and on every possible occasion, those mischievous scribblers have of late been preaching open sedition; and, as shewn by some of the passages which have to-day been quoted from their publications, they have begun to inculcate combination on the part of the Native subjects of the Empress of India for the avowed purpose of putting an end to the British Ráj. This is no exaggeration. I have here under my hand a mass of such poisonous matter extracted from the various organs of the vernacular Press.

"After all that has been already said in description of it, I think it would be unnecessary to trouble the Council with the various illustrations which I had intended to bring under its notice. But here, for instance, is one typical specimen of the art of allegorical calumny described by my hon'ble and learned friend Mr. Paul:—In the Calcutta pice paper, the *Sulabha Samachar*, which has the largest circulation (about 5,000) of any vernacular paper in India, the Macgregor trial was travestied in an article on the 29th December. The prisoner is named 'Mr. Rogue' of the Factory at Kritantapur ('the city of death'); the doctor whose evidence saves him from hanging is 'Dr. Bribe'; and after the conclusion of the mock trial, the Judge, the Doctor and Mr. Rogue dine together, and afterwards go a-hunting.

"The articles that are actually and obviously seditious are, of course, much fewer in number; for there still remains a lurking suspicion that the provisions of the Penal Code under this head may some time or other be put

in force. Both in Bengal and in Bombay the worst inferences are generally concealed under the form of inuendoes. One Bengal paper, after saying that a 'mighty and wide-spread conflagration is often preceded by common smoke,' goes on to point out that the English, 'proud of the power of their bayonets, tread on the heads of the whole Indian population,' and that '25,000 Englishmen are ruling 250,000,000 Natives:' but the conclusion is wisely left to the reader's imagination. And again, another Bengal paper points out that the English themselves 'speak of the decline of their military power and the loss of their prestige as a nation;' and concludes that 'there is great reason to believe in the truth of the statement.' So, too, a Bombay paper, after declaring that 'England has become enervated from too much addiction to luxury, and therefore is not willing to encounter Russia in the field;' instances Alexander, Cæsar and Napoleon Buonaparte as examples that those who have attained the imperial dignity have come to a disastrous end, and prophesies the same result of the Imperial Assemblage at Delhi. The *Kiran*, of Bombay, after saying that 'England has been shewing a thorough effeminateness from the beginning of this war;' that a 'sharp communication from Russia was sufficient to cool its spirit;' that 'England has never been famous for heroism: according to the popular belief, it owes its great Indian Empire more to diplomacy and craftiness than to bravery;' goes on to say that England, yielding to the 'mere appearance of Russia,' her inactivity makes the Natives of India very uneasy about their own safety. And a week later the same paper declares that, as soon as victorious Russia gains a footing in India, 'the English will have no other alternative than to flee for their lives.'

"The *Arya Warta* follows the negative suggestive plan—'Don't nail his ear to the pump': it says—'If we were to write that the Englishmen in India are very few, and though Natives are not brave, but weak and unarmed, yet if they wish they can blow away the English even by their breath, and so to advise the Natives to unite and drive the English out of the country,' this advice would be 'pernicious to us' and 'treasonable.' The *Shiwaji*, a Mahratta paper, is somewhat more outspoken.

"But the most daring sedition is written in the vernacular papers of Upper India. The paragraph which the *Malwa Akhbar* publishes at one of the Mahratta Capitals (Indore) is striking. It gives, as a rumour that 'has perceptibly affected trade and the money-market' in Bombay, that Nána Sáheb is about to invade India with a Russian army, and 'will establish once more the dominions of the Peshwás through the auspices of the Czar', Satára, Baroda.

Nágpur, Jhánsi, &c., being formed into 'feudatory kingdoms acknowledging the suzerainty of the Peshwá.' The same paper, a fortnight later, speaking of the 'evil times' and 'gloomy days' of English rule, says significantly: 'we dreamt last night of a deer holding in his power a lion and a tiger.' A little later, it declares that the main object of the English Government in this country 'consists in wheedling the people out of their money by all manner of tricks.' And, again, the same paper declares that 'a belief has lately grown up in the minds of the Natives that Native rule has many advantages;' 'the Hindús have begun to think the Mussulmans to be Natives;' the English 'will not be able to resist the progress of Russian arms in India;' 'our English military officers now think fighting to be a great sin,' and so on. Having in the intervening issue contented itself with declaring that the English in India 'consider Natives as beasts of prey and generally kill them as such; the oppressions of European officers have now become intolerable.' The same paper a fortnight later (in an article on the Russian occupation of Constantinople), makes a point out of the declarations of some English statesmen that the preservation of our Indian Empire is not of great importance to us; it declares that this is illustrated 'by the fable of the fox and the grapes!' And this is published in Holkár's capital, and doubtless read in every Court and every bázár of Central India.

"Now, the late Mr. Mill, a political thinker who had given much study to the administrative problems of this Empire, was undoubtedly one of the ablest, the most thoughtful, and the most eminent, advocates of *laissez faire* as regards the public expression of personal opinion. But even Mr. Mill recognised very distinctly the paramount necessity of restrictions upon the expression of opinion—as regards communities when they are in their nonage, and as regards individuals, in certain cases, one of which he thus defined: 'Even opinions,' he says, 'lose their immunity when the circumstances in which they are expressed are such as to constitute a positive instigation to the mischievous act.' And on this Sir James Stephen has observed that it is not only possible to throw the abetment of a crime into the form of the expression of an opinion, but that 'you may also throw it into the form of the statement of a fact, as was done by the courtier of Ahasuerus, who, when Haman got into disgrace, casually observed—'Behold also the gallows which Haman has set up.'

"I think the Council must have been satisfied, by the specimens which have now been submitted to its notice, that the vernacular Press is at present an adept in the treasonable art of instigating mischievous action, both by the expression of opinion, and the statement of fact. I am confident that there is

no Government in the world which would tolerate, no Government which could afford to tolerate, none which would be justified in tolerating, the unrestricted utterance of such language as is now addressed by the vernacular journals of this country to the ignorance, the prejudices and the passions, of a subject race. There is an excellent Society for the prevention of cruelty to animals. It is another of those British institutions which is, in its origin, foreign to this country, where, however, there is a wide field for its beneficent exertion. But I am persuaded that not even the most enthusiastic member of that Society would tolerate the continued existence and unrestricted activity of a wasps' nest in his garden, or hesitate to enjoin upon his household servants the timely extermination of venomous insects. I maintain that to prohibit the mischievous utterances of such journals as those from which I have quoted, is no more an interference with the liberty of the Press, than to prohibit the promiscuous sale of deadly poisons is an interference with the freedom of trade.

"My hon'ble friend Sir John Strachey has reminded us that the liberty of the Press is not extended by British law to the literature of Holiwell Street. If, then, the members and officers of the Society for the suppression of vice, if the Legislature which passed, if the judges who apply, and the police who enforce, Lord Campbell's Act for the prevention and punishment of obscene publications,—if, I say, all these authorities be fairly open to the charge of interference with the liberty of the Press, then, and only then, can such a charge be reasonably brought against the Government of India, for having framed, recommended and resolved to carry, this Bill. But if, on the other hand, the freedom of the Press be not only compatible with, but to a great extent dependent on, that protection to public decency and private character of which, in free communities, a free Press is itself one of the strongest safeguards, then I maintain that this Bill, so far from being hurtful to the freedom of the Press in India, is a much-needed guarantee for the continued existence of it. I say that the continued existence of a free Press in India is incompatible with the continued existence of the evils which this Bill is intended to remove; and I say that whatever tends to the prevention of disease, or the correction of deformity, tends also to the preservation of health, and the prolongation of life. We have been taught by One on whose teaching the whole of Christian civilisation is founded, that it is better to pluck out the offending eye, or cut off the offending hand, than that the whole body should perish. But the class of unseemly and seditious publications which will come under the operation of this Bill are assuredly neither the eyes nor the hands of the Native Press of India. They are but foul blotches

and boils, virulent pustules and rank erruptions, on the least seemly parts of it. If, even in the most advanced self-governing societies, it be still the acknowledged duty of the State to provide by law for the repression of publications calculated or designed to pervert the mind and poison the sentiments of those whose characters are yet unformed and whose judgment is still immature, then I assert with confidence that there is no Government in the world on which that duty is more incumbent than the Government of India; and that the measure which, in our discharge of that duty, we have laid before this Council is an eminently just, as well as an urgently necessary, measure. For I maintain, without fear of contradiction, that the young people in England, for whose mental and moral protection Lord Campbell's Act was passed, are infinitely less ignorant, less easily influenced, infinitely better able to govern their own passions and guide their own conduct, than the helpless masses of our Native population, on whose behalf you are now asked to pass this Bill.

"It is not in the spirit of resentment for injuries that we propose to legislate. It is in the firm conviction that the maintenance of our Ráj is for the good of the people, that we seek to save the people from the ruin in which they would involve themselves by seditious agitations against it. We have no desire to resort to fine or imprisonment; but what we do desire, and what we regard as the plain duty of the Government, is to prevent the open preaching of sedition and rebellion amongst the most ignorant, excitable and helpless portion of its subjects.

"Within the last few weeks I have refused applications from two different Local Governments to permit the prosecution of local vernacular newspapers for obvious and rank sedition. And I will state my reasons for so doing. The law, as explained by the Hon'ble Mover of this Bill, is, in its present state, a very questionable instrument. The explanation of 'disaffection' may be taken to explain away almost any incitement to disaffection that is not followed by actual rebellion; so that the probability of securing a conviction would always be doubtful. But, though these considerations might well justify me in hesitating to sanction a prosecution under existing circumstances, it was not solely, nor indeed mainly, on these considerations that I have acted. Had the law been certain, and the temper of the jury such as would have rendered a conviction secure, still I should not have considered a prosecution desirable. What I desire is to *prevent*, not to *punish*, seditious appeals. A successful prosecution, even should it, in some cases, have a deterrent effect, would still invest the prosecuted journal with a mischievous notoriety, and an artificial

importance, calculated to give to its seditious teaching the very publicity which, in the interests of good government, we should desire to prevent. Every such victory would be a virtual defeat.

"It is for these reasons that I came to the conclusion that legislation was necessary; and that it behoved us to direct such legislation to methods of prevention, rather than of punishment. This conclusion has been adopted, after the most anxious consideration, with the unanimous approval of every Member of my Executive Council, and every Local Government in India except one, within whose jurisdiction the vernacular Press is wholly insignificant and unheeded.

"It may, and by some persons it probably will, be regarded as an objection to this measure that it draws a distinction, and apparently an invidious distinction, between the Native and the English Press. It may be said, with perfect truth, that the very words which we regard as innocuous in an English paper will be deemed seditious in a vernacular journal, and that the Native editor may be ruined for repeating what the English editor has published with impunity. Well, this seems a very strong indictment against the Bill; but the briefest examination of the circumstances for which we are legislating will suffice to dissipate the force of it. In the first place, let the real distinction be observed. The distinction is not between Englishmen and Natives, or between the English Press and the Native Press; for many Natives publish their newspapers in English, and in very good English too. Some of the Native newspapers thus published contain excellent and valuable comments on public affairs. Some of them are also edited by men of acknowledged ability and culture, who certainly do not hesitate to criticise the English Government with an asperity and hostility which no other foreign Government in the world would tolerate for a moment. With these papers we do not interfere. Being written in English, they are *ex vi termini* addressed to a more or less educated audience, and a class that has at least the power, even if it have not always the will, to choose between the false and the true, between the evil and the good. From them we apprehend no political danger; and we can trust to their improving education, as time goes on, to render their criticism fairer, and their judgment more according to knowledge. It is not, then, against Native papers, as such, that our legislation is directed. We confine our measures of restriction purely to the papers written in vernacular languages; and we do so because, as I have said before, they are addressed solely to an ignorant, exciteable, helpless class—a class whose members have no other means of information, no other guide as to the action and motives of their rulers; and who, if such action and motives

be persistently misrepresented to them, are likely to give vent to their excited feelings in acts of disaffection, which cannot but be fraught with disaster to themselves.

"There is a very great difference between denouncing, in a debating Society of educated men, the existence of the Government established by law, and using the same language to an excited mob. There are certain physiological works which may be rightly offered to the study of medical students, but which no one would place before schoolboys. What is to competently educated men a subject only of scientific enquiry, becomes an instrument of danger and destruction in the hands of the ignorant. This distinction applies to our treatment of newspapers printed in English, and distinguished from those printed in the vernacular. The one class is addressed to people who can, more or less, judge for themselves; the other to those who are incapable of judging.

"There is, however, one aspect of the case which I have not yet touched upon, but which is scarcely less important than those on which I have been dwelling. It is the use made of the Native papers as a means of extortion for levying blackmail from Native Chiefs and persons of distinction, or as a means of intimidation applied to Native Magistrates and Judges.

"To Natives of distinction, the publicity of newspaper abuse is probably far more galling and intolerable than it is to any class of Europeans; and a Native would be very unwilling to add to this publicity by going into the Court and suing his libeller. It is probable, too, that these cases are but rarely noticed in the reports of our translators. Very lately there was a case pending in a Madras Court in which a member of the Carnatic Family charged a Native paper with having libelled him; but I could find no reference in the reports to the article complained of. We have had, however, not unfrequent complaints on this score. A Native gentleman of high position, writing to us from Peshawar, complained that the editors of certain vernacular papers habitually attack the character of innocent people who cannot afford to satisfy their cupidity. They force people to subscribe to their papers, and write against those who refuse to comply with their request. 'Rájás,' he says, 'and Chiefs dread him (that is to say, the proprietor or editor of a vernacular journal), under the impression that he may write against them, as he did against their compeers. They, therefore, subscribe to his newspaper, and assign an annual sum of money to him. The editor calls over every year to each State, receives money, khillats and sumptuous meals, and comes back.' This is not an isolated instance. I have quite lately received similar testimony from the editor of a most

respectable vernacular newspaper, who feels himself and his calling degraded and blackened by the malpractices of this baser sort of his own profession; but I need not take up the time of Hon'ble Members by referring to other examples. The misuse of the Press, as a means of intimidating Native Judges and Magistrates, was strongly dwelt upon by Sir G. Campbell in a report urging on the Government of India a measure very similar to that which we have now been compelled to adopt. Quoting from the report of one of his most experienced Commissioners, he said—'There is, however, one aspect in which the present unbridled license of the Press is peculiarly injurious to Government; for it affects the feelings of its Native officers and subordinates to an extent which is palpably detrimental to the thoroughly upright and fearless discharge of their official functions. I fear that there is not a Native Deputy Magistrate in the country who could deny that he is afraid of becoming the subject of personal attack in a Native newspaper. I know of scarcely any more exquisite, but certain, process of torture than that which begins with the publication of a scandalous attack on a public officer, and leads up to a call for explanation. Even if his explanation is accepted, he has gone through the ordeal, he has been mentally tortured, while his assailant has lurked in the darkness, and is beyond the reach of punishment. I say, without fear of contradiction, that this villainous misuse of the public Press affects the whole of the administration of justice by Native officers, and that in the exceptional state of this country it is monstrous to allow a system of uncontrolled Press-license to prevail, which is only suited (even if it is suited there) to nations in which independence and civilization are more thoroughly established.'

"Similar testimony is to be found in more recent reports, and is strongly repeated by the present Commissioner of Dacca. I trust, however, that I have now said and read enough to satisfy the Council that we have not undertaken the present measure lightly, or without the fullest and most anxious consideration. We must of course expect that by those people whose minds are governed by phrases, and who look upon the liberty of the Press as a fetish to be worshipped, rather than as a privilege to be worthily earned and rationally enjoyed, this measure will be received with dislike, and the authors of it assailed with obloquy. It is my hope, however, that the gradual spread of education and enlightenment in India may insure, and expedite, the arrival of a time when the restrictions we are now imposing can with safety be removed. I am unwilling to hamper the free influence of honest thought; but I recognise in the present circumstances of this country, and the present condition of the populations committed to our charge,

a clear and obvious duty to check the propagation of sedition and prevent ignorant, foolish and irresponsible persons from recklessly destroying the noble edifice which still generously shelters even its vilest detractors. That edifice has been slowly reared by the genius of British statesmanship out of the achievements of British valour. It was founded by English enterprise; it has been cemented by English blood; it is adorned with the brightest memorials of English character. The safe preservation of this great Imperial heirloom is the first and highest duty of those to whose charge it is entrusted—a duty owed to the memory of our fathers, as well as to the interests of our children; to the honour of our sovereign, no less than to the welfare of all her subjects in India."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 20th March 1878.

CALCUTTA,
The 14th March 1878.

D. FITZPATRICK,
Secretary to the Govt. of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Wednesday, the 13th March 1878, was adjourned to Thursday, the 14th March 1878.

Government Central Press.—N. 904 L. D.—26-3-78.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 20th March, 1878.

PRESENT:

The Hon'ble Sir E. C. Bayley, K.C.S.I., Senior Member of the Council of the Governor General, *presiding*.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

PANJÁB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to amend the Panjáb Laws Act, 1872, be taken into consideration. He said that the changes made in the Bill were not very considerable, and he proposed to state them as shortly as possible. The Select Committee had recast the clauses of the new section 12 of the principal Act, relating to the order in which the various claimants of the right of pre-emption were entitled, and had provided that, where several persons were equally entitled to the right, the vendor or mortgagor might determine which of them should exercise it. The Bill as introduced provided that such determination should be made by lot. But, as the Panjáb Government had observed, so far as the right of pre-emption was enforced, there was interference with ordinary freedom of trade; and to permit the vendor to select his purchaser, whenever it was possible for him to do so consistently with the maintenance of the law, was a step in the direction of returning to the freedom of contract which the law itself unavoidably curtailed. A mode of determination would thus be provided by which the resort to lot,—a course to which there were patent objections, and which could only be adopted where there were no means of deciding at all,—would be entirely obviated.

The Committee had further saved the landlord's right of pre-emption under section 34 of the Panjáb Tenancy Act, 1868, and provided that, "if the landlord refuse or neglect to exercise the right conferred on him by that section, such right belongs, first, to the tenants (if any) with rights of occupancy in the property concerned, and secondly, to the tenants (if any) with right of occupancy in the village in which such property is situate."

They had modified the new section 14 of the principal Act in two particulars, namely, first, by giving the claimant of pre-emption an option of tendering at his own risk what he considered to be the fair market-value of the property, instead of the price demanded by the vendor, which might obviously be, by collusion between the vendor and his purchaser, much overstated, and secondly, by allowing the money to be deposited in Court, instead of being tendered to the vendor.

A similar change had been made in the new section 15 as regards the former of these particulars.

They had inserted in the principal Act a new section, 16A, conferring on the Court in which a suit to enforce a right of pre-emption was instituted, a discretionary power to require the plaintiff to pay into Court the price or market-value of the property, or the amount of the mortgage-money, as the case might be, under pain of having his plaint rejected. This would obviously tend to prevent the institution of vexatious and frivolous suits.

Section 7 of the Bill had been added to supply an omission in the Panjáb Laws Amendment Act, 1875, and to validate certain penalties which had been imposed, and the legality of which, owing to that omission, had been deemed open to question. The Chief Court had decided that, as the matter now stood, the penalty provided by the second clause of section 50 of Act IV of 1872, which had been repealed by Act XV of 1875, no longer attached to a breach of rule made under the first clause of that section.

In section 8 of the Bill they had, at the suggestion of the Revenue, Agriculture and Commerce Department, provided a power to recover advances made to agriculturists for the relief of distress, the purchase of seed and cattle, the construction and repair of buildings, and other purposes not contemplated by the Land Improvement Act, 1871. Such advances would be recoverable as if they were arrears of land-revenue.

The other alterations were merely of a formal or trifling nature, and called for no particular notice here.

He would only add that the Committee thought, and did, he believed, still think, that the clause in the new section, 12 (*d*), giving the Local Government a right of pre-emption in respect of land bearing Government trees, might now be omitted, as the new Forest Act seemed to provide sufficiently for this matter. In deference to the contrary opinion of His Honour the Lieutenant-Governor, who had been consulted by telegraph on the subject, the clause had been allowed to stand.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRESSED SEAMEN'S EXPENSES RECOVERY BILL.

The Hon'ble MR. STOKES also moved that the Report of the Select Committee on the Bill to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices be taken into consideration. He might remind the Council that the primary object of this Bill was to facilitate the recovery of wages due to, and expenses incurred in respect of, distressed Native seamen and seamen belonging to ships connected with British India.

Section 3 had been added to supply an accidental omission in the Indian Merchant Shipping Act, 1875, recently brought to notice by the Board of Trade, and owing to which a question had been raised as to whether, in certain cases, the certificate of a master, mate or engineer could be cancelled or suspended on proof of a wrongful act or default by him causing the loss or abandonment of, or serious damage to, a ship, or loss of life.

Section 4 had been added with a view to supplying a power (the want of which had recently been felt) to direct enquiry into casualties to foreign vessels occurring on the coasts of British India, and section 5 had been added at the suggestion of certain members of the mercantile community in Bombay, to compel persons recovering bales of goods, ships' stores and other property, which might have fallen overboard or otherwise got adrift in a port, to deliver up such property to the Conservator, and to regulate the right to salvage, about which it was said disputes sometimes occurred.

The Hon'ble MR. HOPE said that, with regard to this Bill, he had only to remark that, owing to what doubtless were sufficient legal reasons, it had not been possible to carry out the whole of the suggestions of the mercantile community in Bombay which he had had the honour of bringing to the notice of the

Executive Department. The amendment which had been made related only to salvage in ports. There was still no provision with regard to wreck found outside a port and brought into it, and there recognized by the person to whom it might belong. He trusted a suitable opportunity might soon occur for supplying this further want, and thus completely carrying out the recommendations made by the Bombay Chamber of Commerce.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Leave was granted.

STAMPS BILL.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Thornton be added to the Select Committee on the Bill to consolidate and amend the law relating to Stamps and Court-fees.

The Motion was put and agreed to.

The Council adjourned to Thursday the 25th April, 1878.

CALCUTTA,
The 20th March, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. Central Press—No. 940 L. D.—26-3-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 20th June, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, G.C.S.I.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES presented the second Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. He said:—"Although there is no motion before the Council, I propose, with your Excellency's permission, to make a few remarks on the third stage of the slow, but I think I may say healthy, development of this measure. Drawn originally by the late Indian Law Commission and introduced, as I may remind the Council, in December 1867, the then mercantile members, Mr. Steuart Gladstone and Mr. Skinner, while approving of the proposal to codify the law of negotiable paper, strongly objected to the Bill on account of its numerous deviations from the English, which is practically the Anglo-Indian, law on the subject. More urgent matters took up the time of Sir Henry Maine and Sir Fitzjames Stephen, and the Bill slumbered in its official pigeon-hole until the advent of Sir Arthur Hobhouse, who went through the Bill with the acuteness, industry and learning which he brought to bear on every subject with which he had to deal. He discovered a number of changes and omissions which had escaped Mr. Steuart Gladstone and Mr. Skinner, and satisfied himself that the Bill, if it were to go on at all, must be completely re-drawn. This laborious task was reserved for an excellent mercantile lawyer, my friend Mr. Phillips, our late Secretary in the Legislative Department, and now, as we all know, a leading member of the Calcutta Bar. Of the skill and patience with which Mr. Phillips did his work, I, who discussed every clause—I may say every

word—with him, could speak with confidence and gratitude: but I prefer to read to the Council some of the opinions of men who cannot be supposed to be biassed by friendship. Thus the Bombay Chamber of Commerce, after making some criticisms to which the Select Committee have duly attended, say: 'With these exceptions, the Chamber approve of the provisions of the Bill.' The Madras Chamber say that 'the Bill, while containing some elementary information which might, it is submitted, be omitted without detriment, explains with precision many nice points of mercantile law and usage which, in the absence of legislative authority, are likely to excite controversy.' The Calcutta Trades Association say 'they have given it their careful consideration, and are of opinion that, so far as the particular interests they represent are concerned, no objection can be taken to any of the provisions of the Bill.' The Managers of the Allahabad Bank, the Agra Savings Bank and the Upper India Bank, and the Agent of the Bank of Bengal at Allahabad, have either fully approved of the Bill, or made suggestions so unimportant, that the Local Government has considered it unnecessary to forward them. So much for the mercantile experts. The lawyers follow suit. Thus the present Advocate General of Madras, Mr. O'Sullivan, states that, in his opinion, the Bill deals in the most satisfactory way with the difficult subject of negotiable instruments. 'The Bill,' he says, 'as altered by the Select Committee, is a carefully considered document, and, so far as I can see, leaves nothing unprovided for which is required in such an enactment.' The Recorder of Rangoon 'thinks the exclusion of hundís is the more to be regretted, considering the exhaustive and satisfactory manner in which the Bill has dealt with the particular classes of instruments it embraces.' Similarly favourable opinions have been received from two distinguished Native lawyers, Lakshmí Náráyana Pandit of Lucknow, and Nánábhái Haridás of Bombay.

"The Report states minutely all the changes which the Committee have recently made. The first, and by far the most important, is that in section 1. The Bill as framed by the Law Commissioners and introduced into this Council was silent as to Native Bills of Exchange, commonly called hundís. The result of course would have been to render hundís subject to the Bill, without any saving of the custom of Native merchants. The Select Committee, therefore, inserted a clause declaring that nothing in the proposed Act should apply to hundís. But this went too far in the other direction. The Madras Chamber of Commerce, the Recorder of Rangoon, the first Judge of the Small Cause Court at Rangoon, and Pandit Lakshmí Náráyana have all urged us to bring hundís within the scope of the Act. As Lakshmí Náráyana is a Native lawyer, I will first read the Council what he has said on this subject:—

"'I may also be permitted to state that I cannot understand why hundís have been excepted from the applicability of this Act unless it be to avoid interference with mercantile customs of

Native bankers, whose opinion as to the suitableness of the law to their mutual transactions would perhaps be difficult to secure. After some enquiry from the mercantile classes of this city [Lucknow], I find that there is scarcely any difference between the provisions of the Bill and the rules which, under the sanction of mercantile custom, govern the rights and liabilities of parties to a hundí. I would respectfully suggest therefore that, unless there be any other strong objection to it, hundís be allowed to be governed by the same rules as the other Bills of Exchange, which is likely to facilitate dealings between Native merchants and bankers on the one part, and European bankers and houses on the other. The only part of the law which may be expected to be received as an innovation by Native bankers, and in the working of which they may find any difficulty, is chapter II as to noting and protest; but the appointment as notary in each city of a respectable Native with whom the bankers may be expected to be familiar, and who is sure to be easily accessible to them, is sure soon to reconcile them to it by showing them its undoubted advantages.'

"The Bill, I may remark, provides for the appointment of such notaries. Then the Madras Chamber of Commerce say:—

"'It appears to this Chamber that a law relating to Promissory Notes, Bills of Exchange and Cheques should apply to the instruments termed 'hundís' in use among Natives, which, presumably, represent among the Native community the separately specified instruments employed by Europeans in financial and mercantile transactions. The Act extends to the whole of British India, and should extend to all inhabitants of British India who have occasion to use negotiable instruments. In other branches of legislation, no serious objection has been raised to making Natives, like Europeans, amenable to Acts framed on English law, and this Chamber see no occasion for an invidious distinction in the Bill under notice between the negotiable instruments of the two races. They submit that it should be an advantage to assimilate Native commercial practices to English usages.'

"The Recorder of Rangoon, after urging that the law relating to hundís stood more in need of definition than the law relating to Bills of Exchange, proceeds as follows:—

"'The omission of hundís may have arisen from a reluctance to interfere with the trading laws and customs of the country; but if that objection were allowed to have in all cases weight, no reformation or amendment of the law would take place; and there is no sufficiently strong reason why, in this instance, it should have any. I do not profess to have a wide acquaintance with the law relating to hundís, but I have had both at the Bar and judicially frequently to deal with questions respecting them; and as far as my experience goes, and judging from the opinions I have received from bankers and Native merchants, I should say there is but a trifling difference in the law of hundís and that respecting our own Bills of Exchange, and that, with a slight alteration in the definition of a Bill of Exchange, the present Bill might very well be extended as it stands to hundís. Probably in some few of their incidents, as with respect to notice, there may be some little difference; but if they exist they could easily be ascertained and provided for. Practically, however, these instruments pass from hand to hand by indorsement, and are regarded in the same light and treated in the same way as if all the incidents of an English Bill of Exchange attached to them. The objection, then, that by including them with negotiable instruments which are foreign to the country in

the same legislation, it would clash with our policy to leave the Native laws and customs intact, has not much force.'

"The first Judge of the Small Cause Court in Rangoon says:—

"'The law in the Presidency-towns has been adopted by the Natives in the Provinces as the custom of their dealings in hundís. The present Bill, with slight modifications, can be safely extended to hundís. Speaking by estimation, about 1,500 cases a year come before this Court on, or in respect of, Bills of Exchange and Promissory Notes. In almost the whole of them Indian subjects are alone concerned. . . . I therefore see as much of the practical working of the law of negotiable instruments as any Judge in India, and amongst various classes of people.

"'I would respectfully suggest the omission of the restriction as to hundís.'

"The true solution of the difficulty, which Lakshmí Náráyana has perhaps underestimated, has been given by another eminent Native lawyer, Nánábhái Haridás, who has acted as Judge of the High Court at Bombay, and is now Government Pleader in that Presidency. 'It is possible,' he says, speaking of the usages of Native merchants relating to hundís, 'to leave such customs and usages untouched, and yet, in matters not provided for by them, to apply the provisions of the Act to those instruments.' This is what the Committee have now done. For 'nothing in this Act applies to hundís,' the Bill now says 'nothing herein contained affects any usage relating to any instrument in an oriental language.' The Bill will thus not only embody the ruling of Sir James Colvile in *Amritram* v. *Damoodhur Dass*, that 'when the analogy between bills and hundís is complete, and there is no proof of any special usage, the English law applies:' it will also give effect to the first principle of the policy of codification which the Government of India has resumed, namely, that as little change as possible should be made in the substance of the existing law, whether enacted by the Legislature, declared by judicial decision, or established by ancient usage. I may remark that our new words will not only save Native usages as to hundís, but also usages (supposing such to exist) as to Native promissory notes and cheques. The change is, as I have said, of the very first importance, and the Committee (chiefly in consequence of this change) recommend that the Bill be republished, that it should be carefully examined by the local authorities, and that its further consideration should be stayed till we reassemble in Calcutta.

"The Report acknowledges the valuable criticisms received from the Chambers of Commerce at Calcutta, Madras, Bombay and Rangoon. They had been most useful, and the thanks of the Legislature were due to the able and busy men who had given up their valuable time to the work of improving the Bill. Omission to make any particular change which they recommended was not due to any carelessness or neglect on the part of the Committee, but solely to our

inability to concur in the propriety of the change. Thus section 59 of the amended Bill (=section 70 of Bill No. II) declares that the indorser of a negotiable instrument may by express words restrict the right of the indorsee to negotiate, and gives 'Pay C' as an instance of an indorsement which does *not* exclude the right of further negotiation. On this the Bengal Chamber objects that 'at present, the indorsement 'Pay C' would be considered as requiring C to apply personally for the money, and would not empower him to transfer the document to any other than the drawee.' But I venture to maintain that the illustration is perfectly right. It has been ruled over and over again that the omission of the words 'or order' in a special indorsement will not restrain the negotiability of a bill, the reason being that the indorsee takes it with all its incidents, among which its negotiable quality is included."

His Honour THE LIEUTENANT-GOVERNOR said that, as he should not be able to attend the Council when the Bill for Negotiable Instruments came up for consideration, he wished, with His Excellency's permission, to say a few words on the present occasion—though there was no motion before the Council—with regard to the alteration which had been made in the scope of the Bill by the amendment introduced into clause 1. When the Bill was first sent out in 1868, the Panjáb Government, after consultation with the Judges of the Chief Court, objected to the inclusion of Native hundís in the scope of the Bill, and made certain recommendations regarding the way in which they should be treated. The Judges of the Chief Court, in their letter to the Panjáb Government, showed clearly that there was a distinct *lex loci* in regard to hundís which universally governed those transactions; that a summary of it was to be found in the Manual of the principles of Civil Law, then in use in the Panjáb, and which had been compiled, after very careful enquiry, by Mr. Temple,—now Sir Richard Temple—who had carefully enquired into the Native customs of the large commercial towns in the Panjáb, and shown distinctly that the custom in regard to Native Bills of Exchange—hundís in fact—was very different in principle to that which prevailed in regard to such documents under English law. Subsequently, when the Bill was sent down to the Local Governments for consideration, hundís were expressly excluded from its scope; and he found now that, at a very late period, and upon what he thought insufficient reasons, the law regarding hundís would by this Bill be placed on an entirely different footing. Instead of hundís being excluded from the operation of the Bill, the provisions of it were now made applicable to them. Usages relating to hundís were saved, but the existence of such usages would have to be proved in each case; and thus suits regarding hundís were placed upon a footing entirely different to that on which they stood in the first and second editions of the Bill. This was such a radical change in the Bill that, in the place of merely republishing it, he thought it should be referred to Local

Governments for reconsideration and report. This did not appear from the motion on the paper, nor from the Report of the Select Committee, and for that reason he brought it to His Excellency's notice, as he desired that the Bill should not only be republished, but also be referred for reconsideration to the Local Governments. He was of opinion that the change had been introduced with much too little consideration, and, as it seemed to him,—so far as the Province over which he had the honour to preside was concerned—very much to the detriment of the law.

His Excellency THE PRESIDENT remarked that, as he understood the observations of his hon'ble friend Mr. Stokes, it was proposed by him that the Bill should be referred to Local Governments for further consideration.

The Hon'ble MR. STOKES was afraid that he had expressed himself indistinctly; but he certainly had intended to say, and he believed that he had said, that the amended Bill would be referred to the local authorities for examination. It had always been the practice of the Legislative Department, when republishing a Bill of importance, to send it again to the Local Governments for consideration and report; and on the present occasion, not only would this be done, but the Local Governments would be requested to have the Bill republished in their Gazettes in English and the Native languages. As to the statement of his hon'ble friend the Lieutenant-Governor that the *lex loci* was excluded by the Bill, he begged to say that, on the contrary, it was expressly preserved by the first section. What could be clearer than 'nothing herein contained affects any usage relating to any instrument in an oriental language?' If His Honour could suggest better words, he (MR. STOKES) was sure the Committee would gladly adopt them. As to His Honour's other statement that the change had been made with much too little consideration, he would remark that, if His Honour had only been present on the Committee and heard the long and anxious discussion of the question, initiated by himself and maintained by the Advocate General (Mr. Paul), Mr. Evans and Sir Edward Bayley, he would never have made such a charge as that. The subject was one which had received the most careful consideration: the change was exactly in accordance with paragraph 19 of the despatch (Legislative, No. 34, dated 10th May, 1877) in which the Government of India had informed the Secretary of State of their intention to revise the Bill; and the extension of the Bill to hundís, far from causing detriment to the law in the Panjáb or elsewhere, would, he (MR. STOKES) was convinced, be regarded, not only by lawyers, but by all intelligent mercantile men, as highly beneficial.

His Honour THE LIEUTENANT-GOVERNOR said that he understood that the Panjáb Government had been, on one occasion, rebuked by this Council for sending in an uninvited opinion to the Select Committee of the Government of

India in the case of the Panjáb Tenancy Bill of 1868. It was not stated in the List of Business that the present Bill was to be referred to Local Governments for consideration, nor was it stated in the Report of the Select Committee, and for that reason he thought it right to bring the matter to His Excellency the President's notice.

His Excellency THE PRESIDENT observed that his hon'ble friend the Lieutenant-Governor was right in so doing, but that he fully understood his hon'ble friend Mr. Stokes' intention to be to refer the Bill again to Local Governments for their consideration. Still he thought it might be desirable to embody that intention in the form of a motion.

The Hon'ble MR. STOKES then moved that the Bill be referred to the Local Governments for consideration and report.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Colvin be added to the Select Committee on the Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

The Motion was put and agreed to.

BRITISH BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON moved for leave to introduce a Bill to prevent the indiscriminate destruction of wild elephants in British Burma. He said that legislation, for the object stated in the title of the Bill, had been strongly recommended by the Local Government of British Burma, and was considered by the Government of India to be urgently required, because the destruction of wild elephants in British Burma was going on, and had been going on, so extensively and so indiscriminately that, if allowed to proceed, it must ultimately lead to the extinction of the breed. In support of this statement, he need only trouble the Council with a few extracts from the official correspondence on the subject.

Major Seaton, the Conservator of Forests in British Burma, wrote as follows:—

"There are many large and suitable areas on, and contiguous to, the Donat Range where elephants were found in great numbers, but where hardly a single small herd is now to be met with, consequent on the hunting proclivities of the Karens, who now shoot the males and females indiscriminately, urging, as a plea, that the animals are becoming so scarce that the

hunters cannot afford to limit operations to only the males, although the females rarely furnish a tooth large enough for a dagger handle, and but little of their carcasses can be eaten and carried away."

The Deputy Commissioner of Bassein remarked in his letter of the 17th October :—

"Elephants are constantly slaughtered in the most wasteful manner, in hope of obtaining their tusks; and I am of opinion that, if Government really contemplates the capture of wild elephants, all killing, except for purposes of defence of crops, should be prohibited."

Again, the Officiating Commissioner of the Pegu Division wrote :—

"The Officiating Conservator of Forests quite recently spoke to me on the subject, and stated that, in passing through certain tracts well known as the favourite haunts of wild elephants, he repeatedly came on herds without a single tusker, and consisting mostly of females, and that on enquiring he found that all the male tuskers were systematically shot down by Karens for the sake of the ivory, while from other sources I have reason to believe that the males are generally throughout the country shot down as soon as their tusks attain a marketable size—a process which must lead, first to the deterioration, and ere long to the extinction, of the breed."

To prevent this result, namely, the ultimate extinction of the breed of elephants, was a matter of public concern, because the herds of wild elephants in the forests of British Burma constituted the source of supply of the elephants largely used in British Burma, not only for military and other State purposes, but also for purposes connected with the great and growing timber trade of that Province. He believed that an attempt had been made to meet the evil under consideration, by the issue, under executive authority, of rules prohibiting the destruction of wild elephants, except under license from the district officer or in the defence of life or crops; but, as these rules had no legislative sanction, they could not be enforced by legal process, and had consequently proved more or less inoperative. To meet this difficulty, legislation had been proposed, which would have the effect of placing the existing system on a legal basis; and he might add that the provisions of the Bill would be found to be based on the provisions of an enactment passed with the same object in 1873 for the Madras Presidency, which had been found to work well.

The Motion was put and agreed to.

BOMBAY INDEBTED AGRICULTURISTS RELIEF BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill for the relief of indebted Agriculturists in certain parts of the Presidency of Bombay. He said that the proposal to legislate on this subject was one of the results of the investigation conducted, and the report made, by the Dekkhan Riots Commission in regard to the very serious disturbances which took place in certain

districts of the Bombay Presidency about three years ago. Those disturbances had their origin in circumstances not unlike those which led to the rising of the Santhál population in Bengal in the year 1855; but whilst in the case of the Santháls other questions were mixed up with their special grievance in regard to debt and the exactions of their creditors, and the avowed object of the outbreak was to subvert the reigning power, the sole aim and purpose of the raiyats of the Dekkhan was to wreak their vengeance on the hated oppressor—the saukár—and to procure the extinction of the evidence afforded by the bonds taken from them in most cases without adequate consideration, which had been in the past, and was likely to be again in the future, used with such fatal effect against them by their creditors.

The riots, though they extended over twenty-two villages in the Ahmednagar district and eleven villages in Poona, were attended with no loss of life, and caused no indiscriminate destruction of property; the operations of the rioters were confined to what to them doubtless seemed the laudable purpose of finally settling accounts with their creditors, and they attacked, burned and plundered the houses and property of the latter, ransacking every place where the bonds which they had been forced to execute were likely to be kept.

The constitution of the Commission was such as to afford the best guarantee for the impartiality and freedom from local bias or prejudice of the conclusions at which it might arrive in regard to the causes of the outbreak, and the defects of administration or the operation of the law, if any, which might have conduced to its occurrence; for it included, in addition to two civilians and a Native gentleman belonging to the Bombay Presidency, a civilian taken from the North-Western Provinces, and selected presumably for his varied experience in revenue administration and the condition and circumstances of agricultural industry.

The Commissioners had, by the thoroughness of their enquiry and their exhaustive treatment of the whole subject connected with it, if he, (Mr. Cockerell) might venture to say so, rendered a very important service, not only to the Bombay Presidency in which their inquiries were conducted, but to the country at large, inasmuch as the state of things brought to light in regard to the relations subsisting between the professional money-lender and the agriculturist, though found probably in its worst form in the Dekkhan districts, had its parallel, in some degree at least, amongst certain classes of creditors and debtors in other parts of the Empire.

The investigation instituted by the Commission had elicited a mass of valuable information in regard to the dealings between the raiyat and the money-lender, and as to the condition and circumstances of the agricultural industry

generally in the Dekkhan districts, which in point of bulk was, when compressed into print, but very inadequately represented by the substantial volume which he (MR. COCKERELL) held in his hand. The fact of the extreme indebtedness of a large section of the agriculturists in the districts in which the investigation was made had been conclusively established : nor was this general state of debt, though it had assumed much larger dimensions of late years, of recent origin ; it had existed in some degree almost from the time of the conquest of the Dekkhan and its annexation to British territory. There had, however, been intervals of prosperity : the settlements of 1836-37 recognized for the first time or created the agriculturist's proprietary interest in his land, and this gave him a considerably enhanced credit with the money-lender ; then the construction of railways and public works, and the stimulus given to the cultivation of, and trade in, cotton throughout these districts by the American war, followed in succession, causing a free expenditure of money and consequent rise in the value of agricultural produce. This tide of prosperity began to ebb after 1866-67, and by 1870 prices had fallen, and an adverse state of things set in, which culminated in the disturbances of 1875. The small raiyat's condition had been rendered worse further by a marked increase of population without any corresponding expansion of the area under cultivation or the productive capacity of the land ; he had also contracted habits of increased expenditure on personal comfort, which in his less prosperous circumstances he was loath to forego.

As an illustration of the extent of indebtedness and hopeless embarrassment which had been reached in the case of some of these raiyats at the time of the outbreak, he (MR. COCKERELL) would quote some statistics furnished in the Commissioners' Report. The particulars in this respect of some twelve villages selected at random had been recorded, showing an aggregate book-debt of nearly two lákhs of rupees, whilst the revenue assessment of the debtors' lands amounted to about Rupees 10,000, and their proprietary interest in the same was estimated to be equivalent to ten years' revenue ; so that the total debt in these villages was double the full value of the entire land belonging to the debtors. This would seem obviously to point to the conclusion that the consideration actually passed to the debtors in these must have been wholly disproportionate to the sum of their recorded obligations ; for under no other hypothesis could the money-lending creditors carry on their business, where the value of the security was so much below the outstanding debts represented by it, without absolute ruin.

This conclusion, as to the extreme disparity between the extent of the accommodation actually obtained by the borrower and his recorded obligation in respect of it, was fully corroborated by the facts which had been recorded by a member of the Commission in regard to this question. He (MR. COCKERELL)

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would cite a particular case—an extreme one certainly, but one that had been brought to light in the course of the enquiry. A raiyat had borrowed Rupees 10, and at the end of ten years from the date of the loan, his account with his creditor stood thus: he had paid Rupees 110 and still owed Rupees 220. So that in the short space of ten years, through the process of repeated renewal of bonds in which compound interest at high rates was added to the principal, his debt had been made to mount up to thirty-three times the sum actually borrowed by him.

The causes of this extreme indebtedness had been recorded in much detail in the report of the Commission, and the possible effect of the Government revenue assessments and the state of the law applicable to the relations of creditor and debtor, in conducing to the embarrassments of the agriculturists, had formed the subject of close enquiry and full discussion, not only in the general report, but also in the separate minutes or memoranda which had been recorded by some of the members of the Commission. Foremost amongst the causes of the existing complications were (1) unfavourable conditions of soil and climate; (2) increase of population in excess of any increase in the local supply of means of supporting such population; (3) the obligations of ancestral debt, and (4) the money-lender's custom of inordinately enhancing the original debt by charges of compound interest at high rates, and constant exaction from the debtor of fresh bonds or other instruments of obligation.

An additional recorded cause of the general increase of debt amongst the raiyats of late years was the greater facility of obtaining credit on inadequate security, brought about through the more active prosecution of the money-lending business by a lower class of saukárs.

There could be no doubt that the raiyats of the Dekkhan districts were placed at a very great disadvantage, owing to the naturally unproductive character of the soil and the specially precarious nature of the rainfall in that part of the country; for it was estimated that, with the frequent recurrence of drought and other unfavourable conditions of agriculture, in not more than one year out of three did the cultivator obtain a satisfactory return for his labour. As the raiyats in these districts held their lands under direct engagement with the Government, the possible connection of the revenue-system with, and its partial responsibility for, the poverty and embarrassments of the people became an important subject of enquiry. The report of the Commission, whilst it did not show that the assessment of the land fixed at the latest revision of settlements pressed with undue harshness upon the raiyats, expressed the opinion that, in the peculiar conditions of the Dekkhan as regards climate and the productive capacity of the soil, the fixity of the Government revenue demand operated adversely to the direction of keeping the cultivator free from the

need of recourse to borrowing. A more elastic system under which the demand would better correspond in point of time with his own realization of profit from the land, without at the same time introducing to too great an extent the element of uncertainty as to the amount of the demand, would, it was represented, be more suitable to the exigencies of the case.

The present state of the law relating to the administration of justice and the procedure of the Civil Courts, in so far as it governed or affected the dealings between the saukárs and the raiyats, was fully considered and dwelt upon in much detail in the report of the Commission. It was held that the difficulties of the raiyat had been greatly increased in his earlier borrowing transactions with the money-lender through the change in the Law of Limitation as regards the period allowed for suing on contract-debts which was introduced by the Act of 1859. Previous to the operation of that enactment, the law gave a period of twelve years, and in practice it was found that the creditor was content to allow debts to run on without any settlement of accounts, and bearing simple interest at the ordinary rate for ten or eleven years; whereas after the change in the law the custom of coming to a settlement and renewing bonds on the terms of adding interest to the amount of the original obligation every second year gradually sprung up and had become one of the chief causes of the raiyat's embarrassments. At each recurring renewal of a bond or other instrument of obligation, the opportunity of enhancing the proportions of the previous debt by the addition of fictitious charges of various kinds was largely taken advantage of by the money-lender, and the effect of a renewal, even where no additional consideration was given, was frequently to double the previous debt.

The mode of dealing with cases between the saukár and the raiyat when brought into Court and the whole procedure of the Civil Courts in reference to such cases were wholly to the advantage of the creditor. He could, by collusion with the Courts' officers, delay or prevent the service of the usual process giving notice of his claim being about to be adjudicated; and where this fraud was not resorted to, the raiyat, from his incapacity, through ignorance, to set up an answer to the plaintiff's claim, or his inability to give the time required for a possibly prolonged attendance at a distant Court, put in no appearance; and so it resulted that, in the case of an overwhelming majority of suits instituted by the money-lenders, the Courts granted *ex parte* decrees.

It was shown further that the saukár, having thus obtained a decree without any examination of the circumstances of his claim, had thereby acquired a fresh instrument of oppression and exaction; for, under the pressure of the process issued by the Court in execution of the decree, he could extort from his judgment-debtor almost any terms that he chose to impose upon him, the fear

of having to go to jail upon the issue of a warrant of arrest being sufficient to induce the latter to agree to anything.

That warrants of arrest were largely applied for with no *bonâ fide* intention of imprisoning the debtor, was clearly established by the very small proportion of cases in which such imprisonments had followed on the issue of warrants of arrest; for, seeing that the average raiyat would only in the gravest extremity voluntarily expatriate himself for any considerable period, the hypothesis that he could evade a real and active pursuit with the object of apprehending him was wholly untenable. Ample evidence was elicited in the enquiries of the Commission to show that the worst twist was given to the raiyat's coil of indebtedness after his creditor had obtained from the Civil Court a decree against him; for the decree formed the basis of a fresh agreement and starting-point in a further chain of embarrassments, in which the terms exacted from the debtor were more oppressive than those which marked the stages of bond-renewals to avoid limitation.

To remedy this state of things, the report of the Commission recommended two projects of special legislation: one designed to protect the debtor in his early dealings with his creditor and mitigate the difficulties of his position during the first stage of those dealings, *i.e.*, the period before the institution of a suit against him in the Civil Court; the other for the amendment of the existing law relating to the execution of decrees.

Draft Bills to effect these objects were incorporated with the report of the Commission: the first draft made provision for (1) the appointment of public notaries by whom all instruments of obligation to be executed by raiyats in favour of the saukár might be written and registered; (2) the enforcement of the practice of granting receipts for money-payments and annual statements of account or pass-books on the requisition of the borrower, and (3) declaring the effect of the registration of instruments by notaries to be—for the purpose of extending the period of limitation fixed by the present law in respect of contracts from three to six years—equivalent to registration under the Indian Registration Act.

The second Bill embraced (1) the abolition of imprisonment for debt; (2) the exemption of the judgment-debtor's necessaries in execution of a decree; (3) the restriction of the power of directing the attachment and sale of immovable property in execution of a decree for money, to the District Courts; (4) the introduction of rules for securing a preliminary investigation as to title where the sale of a judgment-debtor's interest in any immovable property was ordered by a Civil Court, and (5) the prevention of agreements, without adequate consideration, made by a judgment-debtor in favour of his creditor, under the pressure of the issue of the Court's process in the execution of a decree against him.

In addition to these legislative proposals, the Commissioners further recommended, in view to checking the prevalent practice of granting decrees *ex parte*, the establishment of special Courts for the trial of small causes, which should hold their sittings in the villages in or near which the persons against whom suits were instituted resided, so as to bring the administration of justice as near as possible to the home of every person sued in connection with his borrowing transactions, and that the Native Judges of the regular Civil Courts should be employed in making tours of inspection of these special village Courts within the local limits of their jurisdiction respectively, so as to insure regularity and uniformity of practice in their procedure and action.

The Government of Bombay, shortly before the late Governor of that Presidency quitted office, reviewed the entire report of the Commission in a letter addressed to the Government of India in April 1877. The Local Government accepted the general conclusions of the Commission in regard to the excessive indebtedness of a large proportion of the raiyats in the districts to which the enquiry had extended, and the causes of it, but did not consider that any case had been made out against the existing land assessments or the system under which the Government revenue was realized, as reasonably entitled to be reckoned amongst the causes of the raiyats' present embarrassments.

In the opinion of the Bombay Government, there was no other way of acting on the rather vague suggestions of the Commission, that greater elasticity in the regulation and recovery of the revenue demand was needed, than reverting to the old system of taking the Government revenue in kind—a retrograde course which that Government could never agree to. A fluctuating demand, on the other hand, under which the revenue-payer would never know what claims he might have to meet would, by introducing the element of uncertainty into the relations between the Government and the raiyat, produce a greater evil than that which it was designed to counteract.

Some reference had been made by the Commissioners to the system of revenue administration obtaining in Madras, where similar raiyatwári settlements prevailed ; but it was shown in the minute recorded by a member of the Bombay Council which accompanied the letter of the Local Government above mentioned, that in point of fact the grant of remissions in seasons in which, through drought or other untoward circumstances, there was an extensive failure of crops, to which the report of the Commission had made allusion, was as much the practice in the revenue administration of the Dekkhan districts as in that of the Madras Presidency.

As regards the effect of the present law and system of administration of justice in bringing about or contributing to the state of things brought to light

through the investigation of the Commission, the Local Government were clearly of opinion that the change in the Law of Limitation introduced in 1859, which so materially shortened the period within which suits upon breach of contract would lie, and the procedure of the Civil Courts under which so many decrees were given on an entirely *ex parte* view of the money-lender's claims, were the causes of much of the raiyat's embarrassments. They accordingly expressed their concurrence in those protective measures advocated in the report of the Commission, which embraced (1) the establishment of public notaries for the preparation and registration of instruments to be executed by the raiyats in favour of the money-lenders, by way of security for the repayment of loans; (2) the enforcement of the grant of receipts for money paid, statements of account, and pass-books by the saukár, on the requisition of the raiyat, and (3) an improved mode of trial of suits upon money claims by the Civil Courts; and they pressed upon the Government of India the expediency of reverting to the old Law of Limitation in force previous to 1859 in respect of suits upon contracts.

The Local Government further, in connection with the recommendations of the Commission regarding an improved method of adjudication of claims for the recovery of debts in the Dekkhan districts, indirectly invited a declaration from the Government of India as to how far definite proposals for an increase of expenditure on judicial establishments would meet with favourable consideration; but, as regarded the scheme submitted by the Commission for the amendment of the law relating to the execution of decrees, they were not generally in favour of the proposal for the abolition of personal arrest and imprisonment for debt, nor did they approve of the suggested limitations in regard to the sale, by the order of Civil Courts, of immovable property in satisfaction of a decree for money; whilst in respect of the further suggested enactment for preventing the improper use of a decree by the judgment-creditor, they expressed no opinion.

The whole matter rested in this state until the question of further action was taken up by the present Government of Bombay, who early in the current year addressed the Government of India, submitting fresh legislative proposals for effecting the following objects:—

1*st*. (*a*) The enforced examination by the Civil Court of the merits of every claim for which it was asked to give a decree, whether any defence was made to such claim or not.

(*b*) The disallowance of the obligation of any person to discharge ancestral debts, unless such person in the Court's presence expressed his readiness to accept responsibility for such debts.

(*c*) The disallowance of the compound interest included in any claim, as well as all interest in excess of a sum equal to the principal represented in such claim.

2nd. The declaration of the insolvency of any debtor upon his personal application, otherwise than after his arrest in execution of a decree against him.

3rd. The prevention of the sale of any land by order of a Civil Court in satisfaction of a decree for money, unless the land had been specifically pledged as security for the debt and the contract under which it was so pledged had been reduced to writing, and the written instrument embodying the same duly registered.

Thus far he (MR. COCKERELL) had very briefly summarized the facts and circumstances leading up to the motion now before the Council, by way of explanation of the reasons for the special legislation now proposed. It only remained for him to state the objects of the Bill which he was asking leave to introduce. They were three in number, namely :—

1. To empower Courts having insolvency jurisdiction to declare a person to be insolvent on his personal application, although he might not have been arrested in execution of a decree.

2. To limit the power of the Civil Court in respect of the sale of immovable property in satisfaction of a decree for money to cases in which the property was specifically pledged as security for the claim decreed.

3. To enforce the reduction into writing of all contracts so pledging immovable property, and the registration of the instruments embodying such contracts.

The Council would observe that legislation for effecting any one of these objects would involve an amendment of the new Code of Civil Procedure or the Contract Law or the Indian Registration Act, *i.e.*, enactments passed by this Council. It followed consequently that the proposed Bill, if it was to be proceeded with, must be undertaken in the Council of the Governor General instead of the Local Council, as the latter had no power to deal with matters affecting the provisions of Acts passed by the superior Council.

As to the policy of the objects of the Bill, he need only say that, when the provisions of the new Civil Procedure Code were under discussion, there was every disposition on the part of the members of the Select Committee by whom

the details of that enactment were considered, to accept the principle of an unrestricted system of insolvency adjudication ; and they were only deterred, he thought, from giving effect to the larger measure, by the consideration of the insufficiency of the machinery available to secure its efficient operation. Such an objection would not apply in the case of the present Bill, the operation of which was limited to four districts only.

The propriety or expediency of the prohibition of the sale of land in satisfaction of decrees for money had been largely discussed in connection with the same Code, and there were not wanting advocates of such a course, even if applied to the whole of India ; and at all events there was ample precedent for the adoption of such a policy when its application was restricted to the small area within which this Bill, if passed into law, would take effect.

The enforcement of the registration of all documents affecting title to, or interest in, immovable property without restriction as to the value of the interest, had more than once been advocated by him (MR. COCKERELL) in this Council, as a fit provision for all India ; and the only tenable objection that he had ever heard made to such a proposal was the inadequacy of the present registering offices and establishments for such an undertaking and the consequent inconvenience and harassment to the people which would result from such an obligation if applied to all parts of the country. The force of such an objection would of course be largely diminished in the case under discussion, because, as before remarked, the area of the operation of the measure would be small, and the executive would take care to make the needful provision in the way of a suitable agency for the registration of documents, the registration of which was thus made compulsory.

The Motion was put and agreed to.

CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Code of Civil Procedure. He said that that Code had now been in force for nearly nine months, and the object of the present Bill was to make some amendments which experience had shown to be either necessary or desirable. He might mention that the late Law Member, as well as the rest of the Select Committee, had fully anticipated that necessity for making amendments would arise in a short time after the Code had become law. It was, however, thought desirable that the Code should be enacted while Sir Arthur Hobhouse was in the country, so as to give the Indian public the great benefit of the explanations which the Council would remember he made on the occasion of the Code being passed. But *ogni granò ha la sua semola*, 'every grain has its bràn,' and it must be confessed that this benefit was somewhat counterbalanced by certain faults, both in form and substance, which would probably have been

corrected had more time been given to revise the numerous alterations made by the Select Committee in the last edition of the Bill. MR. STOKES thought he would now best discharge his duty by merely mentioning the more important changes which the Executive had recommended to be made, and saying nothing whatever of the comparatively unimportant drafting alterations which he himself considered desirable.

The fourth section of the Code saved "any local law prescribing a special procedure for suits between landlord and tenant." It had been held that the local laws referred to here were only local laws in force when the Code was passed. The result, of course, was that the local legislatures were debarred from making any law dealing with that matter. It was accordingly proposed to amend this section by inserting after "local law" the words "whether before or after this Code comes into operation." It might also be desirable to make a similar amendment with regard to certain suits between landholders and their agents.

Section 229 of the Code provided for the execution in British India of decrees of any Courts established by the authority of the British Government "in the territories of any Native Prince or State in India." He need hardly remind the Council how extremely difficult it was to say what "India" really meant; if hon'ble members would look into Colonel Yule's edition of *the Book of Ser Marco Polo*, they would see that the term had been vaguely used from the time of Pliny. Indeed, until Sir Fitzjames Stephen's Bill consolidating the statutes relating to this country was passed into law, it would be impossible to say with confidence what the term "India" comprised. The result of the present wording of section 229 was to exclude certain Courts, for instance the Court of the Resident at Mandalay, from the operation of the section, and that led to obvious inconvenience. The Bill would accordingly substitute the words "Foreign Prince or State" for the words "Native Prince or State in India."

When a judgment-debtor was imprisoned and the District Court was situated a long distance from the jail, some inconvenience had been caused by the requirement of section 339 of the Code, that the monthly payment of subsistence-money of the prisoner should be made to the proper officer of the Court. If the decree-holder failed to pay this money, the Court's order for the discharge of the debtor could not be notified to the officer in charge of the jail until some days after the failure had occurred, and it was hard to say how the debtor was to be supported while he was unnecessarily detained. This difficulty had arisen in Burma and Lower Bengal. The Bill accordingly proposed to substitute for the officer of the District Court the officer in charge of the jail and, in case of non-payment, to dispense with the order of the District Court as a condition precedent to the discharge of the debtor.

The next point was with reference to section 588 of the Code, which gave appeals from certain orders. Two additional appeals had here been provided for by the Bill: appeals against orders for the sale of attached property, and appeals against orders rejecting applications to set aside a decree *ex parte*. It was also thought desirable to omit from clause (*j*) of that section—which allowed an appeal from orders under section 244, as to questions relating to the execution of decrees—the words "of the same nature with appealable orders made in the course of a suit." Those words had been inserted by the Select Committee, and he confessed he never understood them, and did not understand them now. They had already given rise to great difficulty and doubt. The effect of this omission would be to give only one appeal from orders determining questions relating to the execution of a decree. Possibly the Committee to which the Bill would, he hoped, be referred might consider it preferable to strike out clause (*j*) altogether, and to make it perfectly clear, by a slight addition, either to the definition of "decree" or to section 244, that the Code treated such orders as decrees and gave two appeals therefrom.

The last point he would mention had reference to section 652 of the Code, which enabled the High Courts to make subsidiary rules to regulate the procedure of the subordinate Courts, but did not give power to the High Courts to make similar rules to regulate their own procedure. In the case of the chartered High Courts this omission was harmless, for the matter was sufficiently provided for elsewhere. But in the case of Judicial Commissioners and other "High Courts" as defined in Act I of 1868, this omission had caused inconvenience, and it was therefore proposed to insert after the words "connected with" the words "its own procedure or."

It had not been thought necessary to provide against difficulties which had arisen solely from a strange forgetfulness of the provisions of the General Clauses Act, I of 1868, section 6, and the decision of the Bombay High Court (6 Bomb. A. C. J. 168) on that section. But the expediency of extending to Mufassal Courts of Small Causes the sections of the Code (223—228) which enabled one Court to send its decrees for execution to another Court, was under the consideration of the Home Department.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 4th July, 1878.

SIMLA;
The 20th June, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The Meeting which was originally fixed for Thursday, the 25th April, 1878, was adjourned to Thursday, the 20th June, 1878.

Govt. C. B. Press, Simla—No. 106 L. D.—1-7-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 4th July, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, G.C.S.I.
Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.

BRITISH BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON introduced the Bill to prevent the indiscriminate destruction of wild elephants in British Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Thompson and the Mover. He said that the circumstances which had rendered legislation necessary to prevent the indiscriminate destruction of wild elephants in British Burma had been explained by him at the last meeting of the Council. Copies of the Bill, with a Statement of Objects and Reasons, were now in the hands of Hon'ble Members. The Bill, as he had previously mentioned, was based upon a similar enactment passed for the Madras Presidency. It prohibited the destruction or injury of wild elephants without a license from the district officer, except in defence of human life, or when elephants were found in the act of injuring houses or crops, or upon, or in the immediate vicinity of, any main public road or railway. Licenses to shoot wild male elephants on Government lands might be granted by district officers under rules to

be made by the Chief Commissioner of British Burma; and all persons found shooting, or attempting to shoot, wild elephants on Government lands, were bound to produce their licenses, on the requisition of any Police or Revenue-officer. Breaches against the law were punishable by fine and, in certain cases, on second conviction, by fine, or imprisonment, or both.

Such were the main provisions of the Bill as introduced: but it was right that he should mention that, late on the preceding evening after the papers had been circulated, he received from the Department over which the Hon'ble Mr. Thompson presided, certain suggestions for the improvement of the Bill. Time had not permitted the embodiment of those suggestions in the Bill now before the Council; but, as the amendments proposed did not affect the principle of the measure, it had not been considered necessary to postpone its introduction on that account. One of the suggestions was to the effect that the scope of the proposed enactment should be so far extended as to enable the Local Government of British Burma to regulate, not only the destruction, but also the capture, of wild elephants; and another suggestion was that, except when otherwise specially allowed, all persons shooting wild elephants should be bound to make over to the Government the tusks of the animal destroyed, the object of this provision being to remove what had been practically found to be the great incentive to that indiscriminate slaughter of elephants which had led to the initiation of the present measure. He need hardly say that the above mentioned suggestions would receive careful consideration in Committee, together with any other suggestions or criticisms that might be received from the local authorities of British Burma.

The Hon'ble SIR JOHN STRACHEY only wished to take the opportunity of saying, with regard to this measure, that, while he had no doubt whatever of the necessity of passing such a law for British Burma, he was under a strong impression, from what he had seen in his own experience as Lieutenant-Governor of the North-Western Provinces, and from what he had heard went on elsewhere in other parts of the Bengal Presidency, that an enactment of this kind for the prevention of the destruction and capture of wild elephants was hardly less necessary in parts of that Presidency than it was in British Burma; and, although he was not in a position at that moment to enter into any details on the subject, he thought it was deserving of consideration whether the scope of the present Bill might not, with great public advantage, be extended.

His Excellency THE PRESIDENT suggested that the question was one which might be made the subject of communication between the Government of India in the Departments concerned and the Local Governments, and that the

views thus obtained might advantageously be considered in the Committee on the Bill.

The Motion was put and agreed to.

The Hon'ble MR. THOMPSON moved that the Hon'ble Mr. Colvin, as the representative of the North-Western Provinces, be added to the Select Committee on the Bill.

The Motion was put and agreed to.

The Hon'ble MR. THORNTON moved that the Bill be published in the *British Burma Gazette* in English and in such other languages as the Local Government should think fit.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Code of Civil Procedure, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. Arbuthnot and the Hon'ble Messrs. Thornton and Cockerell and the Mover. He had nothing now to add to the remarks which he had made when moving for leave to introduce the Bill, save that the opportunity had been taken to cancel the reference (now obsolete) in section 4 of the Code to a pair of Acts, XIX of 1865 and IX of 1873, which had been repealed, after the passing of the Code, by the Panjáb Courts Act, 1877.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments should think fit.

The Motion was put and agreed to.

FERRIES BILL.

The Hon'ble MR. STOKES presented the Preliminary Report of the Select Committee on the Bill to regulate Ferries in the Panjáb, North-Western Provinces and Oudh. He said that, although there was no motion before the Council, he would just mention, with His Excellency the President's permission, that the Bill, as introduced, only extended to the Panjáb, the North-Western Provinces and Oudh; but since its publication a letter had been received from the Chief Commissioner of the Central Provinces, requesting that the Bill might

be extended to those territories. The Secretary to the Chief Commissioner said:—

"The Chief Commissioner has noticed in Part V of recent issues of the *Gazette of India* a Bill to regulate Ferries in the Panjáb, North-Western Provinces and Oudh, and a careful perusal of the Bill convinces him that its provisions are suitable to these Provinces.

"Here also Bengal Regulation VI of 1819 has regulated the establishment, &c., of ferries, and the Chief Commissioner would be glad to see it replaced by the Bill now before Government."

The Committee had done that, and had also declared that the tolls and rents raised in the Central Provinces under the Bill were to be credited to the Local Government, and applied at its discretion to any of the purposes specified in the second clause of section 5 of the Central Provinces Rates Act, X of 1878.

Besides these, other important changes had been made which it was right to mention to the Council. In the first place the Committee had empowered the lessee of tolls under the Bill to surrender his lease on the expiration of two months' previous notice and on payment of such fine as the local authorities might direct. In the second place the Committee had introduced a section compelling the Police, when required, to aid the lessee or other person authorised to collect the tolls of a public ferry in the collection of his tolls. This provision was analogous to the rule contained in the Roads and Bridges Act, VIII of 1851, section 5. The Committee had not, however, thought it necessary to give power to seize carriages and animals for non-payment of toll on demand. Thirdly, it was proposed to empower the Local Government to cancel leases of ferry-tolls where misconduct was proved on the part of the lessee, or where he made default in paying his rent. This of course might be done by inserting proper provisions in the lease: but it was thought better to provide for the matter in the Bill. When the lease was cancelled the Committee had, at the suggestion of the Government of the North-Western Provinces, authorised the Magistrate of the District to retain the ferry-boats (paying suitable compensation) until other arrangements could be made. Fourthly, it was proposed, at the suggestion of the Lieutenant-Governor of the Panjáb, to whom the Committee were much indebted for a valuable paper on the Bill, to provide a penalty for an offence which Mr. Stokes understood was of very common occurrence, that, namely, of persons refusing to leave an already overcrowded ferry-boat at the request of the toll-collector, and thus endangering human life. This particular offence was not provided for by the Penal Code.

The Committee had also provided a penalty for causing damage to bridges of boats (which the definition of 'ferry' included) by the careless navigation of vessels or rafts, and had enabled the toll-collector in such cases to seize and detain the vessel or raft pending the award of compensation for the damage!

In compliance with another suggestion of the Panjáb Government, the Committee had enabled the local officers, in certain cases of urgency, to impress boats at ferries. The Panjáb Government thought that Magistrates of Districts should be expressly empowered to impress boats when it was necessary to temporarily increase the means of transit at a ferry for the conveyance of troops or of a large camp. Experience had shewn that action of this kind must occasionally be necessary, and it seemed best to legalise a course which in practice it would be impossible to avoid. The requisite provision for compensation to the owners of impressed boats had of course been made.

If the Committee had merely made those alterations in the substance of the Bill it would be desirable to publish the amended draft; but the fact that it had not yet been submitted to the officials and the people of the Central Provinces, to which territories it would now apply, seemed to render republication imperatively necessary.

The Hon'ble SIR EDWIN JOHNSON enquired whether there was any provision in the Bill giving Military officers precedence in the use of ferries. If not, he would suggest that such provision should be made. If it was considered necessary by the Military authorities to make use of a ferry,—of course only in case of emergency—he thought that they should have the right to do so to the exclusion of all others.

The Hon'ble MR. STOKES said that the Bill at present contained no such provision: a clause very like that which his hon'ble and gallant friend suggested would be found in the Indian Railway contracts and was recognised in the Railway Act (XVIII of 1854, section 2); and he would propose that the Military Department should address the Legislative Department and make the suggestion, when the Committee would take it into careful consideration.

ASSIMILATION OF POWERS (NORTH-WESTERN PROVINCES AND OUDH) BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh.

Leave was granted.

The Council adjourned to Thursday, the 18th July, 1878.

SIMLA:
The 4th July, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla,—No. 130 L. D.—11-7-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 1st August, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.
The Hon'ble B. W. Colvin.
The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble G. H. M. Batten.

NEW MEMBER.

The Hon'ble G. H. M. Batten took his seat as an Additional Member.

ASSIMILATION OF POWERS (NORTH-WESTERN PROVINCES AND OUDH) BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh, and moved that it be taken into consideration. He said that the Governments of the two Provinces were now united under the administration of a single officer, and the object of this Bill, which Sir Edward Bayley had obtained leave to introduce some time ago, was to assimilate, as far as possible, the powers of the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh under certain Acts relating to Rent, Land-revenue and other matters of primary administrative importance.

The Committee had only made four changes, which he would briefly describe to the Council.

In the Oudh Civil Courts Act, 1871, the Committee had made certain modifications, the effect of which would be to render the powers of the Chief Commissioner as regards the Courts in Oudh as nearly as possible similar to those of the Lieutenant-Governor as regards the Courts in the North-Western Provinces. For instance, the Commissioners, Deputy Commissioners, Civil Judge of Lucknow and Assistant Commissioners would henceforward be appointed by the Chief Commissioner instead of, as hitherto, by the Governor General in Council. The Judicial Commissioner of Oudh would continue to be appointed by the Government of India.

The second alteration had been made at the suggestion of the Home Department. The Committee had declared that, for the purposes of the Reformatory Schools Act, Oudh and the North-Western Provinces should be deemed to be subject to the same Local Government. There was little hope that more than one reformatory could for many years be established in the united Provinces; and under the existing law the Jail Authorities would be unable to comply with directions of the Criminal Courts under the Code of Criminal Procedure, section 318.

Thirdly, the Committee had given the Chief Commissioner the same power to alter the limits of Districts and Sub-divisions in Oudh which the Lieutenant-Governor had in the North-Western Provinces under Act XIX of 1873, section 14.

The last amendment, which had also been made at the suggestion of the Home Department, would preclude doubts as to the legality of certain appointments which had been made, and acts which had been done, since the union of the two Provinces, by the Chief Commissioner or without the sanction of the Governor General in Council. In the absence of some such amendment the validity of these appointments and acts might possibly be called in question.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed. It was not one of much public importance: but it would greatly diminish the correspondence between the Government of India and the Local Government of Oudh; and it would facilitate the transfer of officials from Oudh to the North-Western Provinces and *vice versâ*.

The Motion was put and agreed to.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE presented the preliminary Report of the Select Committee on the Bill to consolidate and amend the law relating to Railways in India. He said that the Committee had made certain amendments and modifications in the original Bill as presented to the Council, and it was proposed to publish their Report, and to re-publish the Bill. The Report was very full, and the reasons and the authorities by which the Committee had been guided in making those amendments were stated by it in detail. He would not therefore, at present, trouble the Council with any additional remarks on the Bill, as it was not proposed to go on with it until the Council met at Calcutta, when he would take the opportunity of answering any objections, and remarking on any proposals or suggestions, which might have been made regarding the measure.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Hon'ble Nawáb Sir Faiz Alí Khán be added to the Select Committee on the Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

The Motion was put and agreed to.

The Council adjourned to Thursday the 15th August, 1878.

SIMLA;
The 1st August, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The Meeting which was originally fixed for Thursday, the 18th July, 1878, was adjourned to Thursday, the 1st August, 1878.

Govt. C. B. Press, Simla—No. 179 L. D.—5-8-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 5th September, 1878

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.
Lieutenant-General the Hon'ble Sir S. J. Browne, K.C.S.I., C.B., V.C.
The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble G. H. M. Batten.

ACT IX OF 1878 AMENDMENT BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved for leave to introduce a Bill to amend Act No. IX of 1878 (*for the better control of Publications in Oriental languages*), and which was commonly known as the "Vernacular Press Act." The Bill which he desired to introduce, had been framed in consequence of instructions received from the Secretary of State in a despatch in which he conveyed the assent of Her Majesty's Government to the Act which was passed in March last, but requested the Government of India to refrain from putting into operation that portion of the Act which enabled the publishers of vernacular newspapers to withdraw themselves from its restrictive provisions by submitting their proofs to a Government officer; and desired that, if necessary, the Government of India should, by fresh legislation, either suspend or abandon that portion of the Act. With His Excellency's permission he would read to the Council the paragraph of the Secretary of State's despatch which contained the instructions in question. It was as follows:—

"9. I entertain very grave doubts of the expediency of putting into action the portion of the Act which enables, and indeed encourages, the publishers of vernacular newspapers to withdraw themselves from its restrictive provisions by submitting their proofs to a Government officer. In India the difficulty of executing it would be unusually great. The verna-

cular newspapers are printed in a great variety of languages; no one officer could probably superintend them with effect. Every person charged with the duty of supervision must be acquainted with the niceties of Native dialect, and most of these persons would probably have to be natives of the country. Such a system might give rise to great abuses. It is defended, I observe, in the Statement of Objects and Reasons, on the ground of the hardship which the requirement of a bond and of the deposit of security might inflict on some of the owners of vernacular journals; but it seems to me that these provisions of the Act might be accommodated to the circumstances of each newspaper. The difficulties of establishing Government newspapers in the vernacular tongues were much dwelt upon in the debate in your Council, and I fully appreciate them; but I cannot but see that any censor of proofs will in fact write the newspaper which he revises. Her Majesty's Government request that you will refrain from putting this part of the Act into operation, taking power, by fresh legislation, to suspend or abandon it if you deem this necessary."

The Government of India had given very careful consideration to the instructions contained in the paragraph which he had just read, and had come to the conclusion that if that portion of the Act to which the Secretary of State had taken exception was not to be brought into operation, it was on every account expedient, and in fact necessary, that it should be repealed; otherwise very serious embarrassments might occur in the event of circumstances arising under which a proprietor of a newspaper might elect to avail himself of the provisions in question.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT then introduced the Bill, and moved that it be taken into consideration on the 26th September, 1878. He said that on that occasion he should take the liberty to offer to the Council some remarks on the working of the Act and on the discussions which had taken place both in this country and in England with reference to it.

The Motion was put and agreed to.

HUSAINÁBÁD ENDOWMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to make better provision for the management of the Husainábád Endowment at Lucknow, and moved that it be taken into consideration. He said that as this Bill was about a year old, it might be convenient to recall to the recollection of the Council some of the leading facts connected with it. Its object was to provide for the due administration of what was called the Husainábád Endowment, the property of which, speaking roughly, now amounted to two and a half crores of rupees. The endowment was created about forty years ago by the third King of Oudh, Muhammad Alí Shah. Its trusts were three—firstly, to provide for the payment of certain pensions; secondly, to defray the expenses of a mosque called Husainábád Mubárak; and thirdly, to

repair a certain road. It was to be managed by two Superintendents and an Agent and their descendants for the time being. In 1857 the mutiny broke out; the then Agent joined the mutineers and was killed at Lucknow, and the property disappeared, some of it having been improperly disposed of by the Superintendents. The property, or most of it, was, however, after some time recovered, and new Superintendents and a new Agent were appointed by the pensioners.

Since then one of these new Superintendents had died, and on looking at the trust-deed (which was not, he need hardly say, framed by a professional conveyancer) it appeared that the appointment of these new trustees after the mutiny was altogether unauthorized, and that there was now no power to appoint a new trustee in place of the one who had died. Hence the necessity for the present Bill.

The Committee, which consisted, besides Mr. Basset Colvin and himself, of their hon'ble colleague Nawáb Sir Faiz Alí Khán, had fixed the number of the trustees at three, as it had been urged by the pensioners that it would be more convenient and more in accordance with the views of the founder to keep it as small as possible. It was right to say that the Local Government would have had only two trustees, with the Commissioner of Lucknow as referee in case of disagreement. But it had long been held inexpedient to connect the Executive with the management of Native religious institutions, and this opinion had received a legislative expression in Act XX of 1863.

Where a vacancy occurred in the office of trustee after the first appointment, the Committee had declared that such vacancy should be filled, not, as provided in the original Bill, by a person to be appointed by the Government at its pleasure, but by a person to be selected by the Government from a number nominated by the pensioners and the descendants of Muhammad Alí Shah. They had further provided that the number of persons to be nominated, whether under section 1 or section 2, should not be less than double the number of vacancies, and that in the event of the pensioners and descendants of Muhammad Alí Shah neglecting for one month to nominate (an event which he need hardly say was very unlikely to occur), the Government might appoint any person it pleased.

They had omitted the provisions made in sections 5 to 7 of the original Bill for regulating the proceedings of the trustees (with the exception of that making the majority of votes decisive), as the Local Government had represented to them that "such precise rules are unsuited to Native gentlemen who have not business habits."

Sections 12 and 13 of the original Bill were intended chiefly to provide for the institution of proceedings for the settlement of a scheme for the endowment and for the recovery of trust funds. It now appeared that there was no necessity at present to attempt any remodelling of the scheme as settled by the founder; and as it was urged that the idea of making any provision on this point was distasteful to those concerned, those sections had been struck out altogether. The other matter, as to the recovery of property belonging to the endowment, would be sufficiently met by the general law of the country

The Council would see that the effect of the principal changes the Committee had made would be to simplify the management of the endowment, and to put it on a footing more in accordance with the views of the founder and with the wishes of those interested than it would have been under the Bill as originally introduced.

In conclusion, he thought it right to mention the objections taken to the Bill by two Native gentlemen, 'Áshiq Husain and Pandit Srí Krishna.

'Áshiq Husain said:—

"I and the Shias residing at Bareilly read the whole Bill relating to the Imámbára Husainábád, Lucknow. It interferes in some points with our religious doctrines. For there is nothing left, not even a single point, by the leaders of any faith with respect to the doctrines of wills and endowments, for which provision is made to a large extent in the Muhammadan law."

MR. STOKES had read the last sentence at least six times without getting even a glimmer of the meaning, and the old saying had occurred to him,—*Si non vis intelligi debes negligi.* Perhaps 'Áshiq Husain would reply with the dilemma made by Thomas Anglus when accused of obscurity: "Either the Council understand me, or they do not. If they understand me and find me in error, it is easy for them to refute me; if they do not understand me, it is unreasonable for them to exclaim against my dogmas." As to the allegation that the Bill interfered in some points (none of which were, or could be, specified) with religious doctrine, he would not waste the time of the Council by disproving it: he need only point out to the Muhammadan public generally that the report of the Committee had been signed by an orthodox Muhammadan nobleman,—Nawáb Sir Faiz Alí Khán—who had taken an intelligent and active part in settling the Bill.

Pandit Srí Krishna was a lawyer and, naturally, took quite a different objection. He said:—

"If then, the founder of the endowment did not require the interference of the Sovereigns of Oudh in any way whatever in clear and unambiguous words, it is respectfully submitted

that the British Government, as the present Sovereign of Oudh succeeding the last deposed Sovereign, is legally prevented from interfering with this endowment and legislating for it contrary to the will of the founder."

MR. STOKES wished to speak with all respect of Pandit Srí Krishna, to whom the Council were indebted for a careful and learned opinion on the Transfer of Property Bill; but he thought that the Pandit, when he made that objection, had overlooked the twenty-second section of the Indian Councils Act, which gave express power to the Governor General in Council to make laws and regulations "for all persons, whether British or Native,..... and for all places and things whatever" within British India. No doubt, the intention of the author of a charitable or religious trust should, so far as was proper and practicable, be strictly observed. But he could not decide irrevocably as to what would be best for the trust at all future periods; and where the literal performance of his intention would be inexpedient or impossible, in every civilized country the legislature, and in many places the Courts, had the right to modify his specific design.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

STAMP BILL.

The Hon'ble MR. COCKERELL in presenting the preliminary Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamps and Court-fees desired, with the permission of the President, to make a few remarks in regard to the presentation of the Report, and also to some of the chief points of distinction between the provisions of the amended Bill and that previously introduced. He said that the object of presenting this Report at the present time and place was to secure an early publication of the amended Bill, and thus afford sufficient time and opportunity for the proposed amendments of the existing law to become generally known, and for the submission of opinions in regard to any of these proposals which might be thought, on examination by experts, to be not likely to work satisfactorily, or which might on other grounds be objected to by persons who considered their interests or the interests of the public prejudicially affected by them; for, as the amendment of the Stamp law had now been under discussion or consideration for nearly three years, he (MR. COCKERELL) thought it very desirable that the Council should be in a position to deal finally with the recommendations of the Committee soon after the Council met in Calcutta, so that the new law might come into force on the date mentioned in the amended Bill—the 1st January, 1879.

In regard to the amended Bill, the first point to which he would draw attention was the elimination of all provisions relating to the subject of Court-fees, and the restriction of the present measure to stamp-duties only.

There was much doubtless to be said on both sides of the question, as to whether the convenience of the public was better secured by the consolidation of the law relating to Court-fees and general stamp-duties, or by the maintenance of the present system under which these subjects were regulated by separate enactments; and, although a majority of the Select Committee had advocated the course now proposed on the score of general convenience, it might well be doubted whether, on the question being raised as a distinct issue, the weight of opinion on the part of those who, from their practical experience, were most competent to form a correct judgment in this matter, would be on the side of dealing with these subjects by separate legislation.

One Hon'ble Member of the Committee, now absent (Mr. Hope), had been strongly opposed to the omission of the provisions relating to Court-fees, on the ground that the convenience of the public and those engaged in the administration of the law would be gravely prejudiced by any departure from the original scheme of consolidation.

But there was an additional consideration, and this in his (MR. COCKERELL'S) opinion presented the most cogent argument in support of the continued separation of the legislation relating to general stamp-duties and that regulating Court-fees. In the former Bill provision had been made for three material changes, besides others of minor importance, in the law relating to Court-fees.

1*st.* The assimilation of the institution-fee leviable in respect of suits instituted in the Small Cause Courts of the Presidency-towns and the mufassal by the reduction of the former and increase of the latter from 12½ and 7½ per centum, respectively, to a uniform rate of 10 per centum.

2*nd.* The substitution of a uniform fixed fee for the service of each kind of Court process for the fluctuating rates prescribed by the rules in force under the existing law.

3*rd.* The addition of one-half per centum to the fees heretofore chargeable on probates and letters and certificates of administration.

The communications received from the Local Governments and authorities consulted negatived the expediency of the first, assented in general terms to the second, and represented that the time had not yet come for the adoption, with any material advantage to the revenue, of the last of the above proposals. The qualified approval of the projected uniform fixed rate of fee chargeable on

the service of processes would almost certainly have been withdrawn, now that most of the Local Governments had to meet their expenditure from provincial revenue in respect of stamp-duties and Court-fees. Under the central system of finance a universal rate for each description of process-fee was practicable, as any deficiency in the receipts as compared with the charges in one province was likely to be balanced by a corresponding surplus in another; but a rate which would have been sufficient to guard against an excess of expenditure over income in respect of the service of Court-processes in every province of the Empire would have been too high for general adoption. The former Bill, though dealing in a general way with Court-fees, made no alteration in the *ad valorem* fees levied on the institution of suits in the ordinary Civil Courts. No revision of these fees had been specifically recommended by the authorities; but it was well known that in some quarters the existing rates of institution-fees were regarded as unnecessarily high. Comparisons between the receipts from Court-fees in, and the charges incurred in the maintenance of, the subordinate Civil Courts throughout the country had been freely made with the object of showing that, as a net result of the present system, the administration of justice had practically become a source of revenue. In this state of feeling on the subject, it would have been impolitic to affirm the propriety of the continued maintenance of these rates by their re-enactment in a law which might be expected to remain in force for a considerable period.

For all these reasons he thought the conclusion inevitable, that the law relating to Court-fees could not yet advantageously be dealt with in a comprehensive manner, and he was chiefly on this account satisfied that the Committee had done wisely in recommending that the present legislation should be confined to the subject of stamp-duties.

Turning now to the details of the amended Bill and taking them in the order in which they appeared there, he would draw attention to the circumstance that the apparent considerable reduction in the number of the interpretation-clauses was in great measure due to the transfer to the schedule of the definition of all instruments mentioned or referred to in the schedule only: by this arrangement not only had much repetition been avoided, but persons who had to consult the law as to the proper duty payable in respect of any instrument would have to look to one place instead of two for the required information.

The term "Bond" had been made to include instruments having the conditions of the Native "khátá" or "tamassuk" as now framed. Those instruments differed from the ordinary promissory note in this respect, that they were invariably, according to the existing practice, attested by witnesses.

Such attestation obviously gave them an increased value as evidence. No, increase of taxation was involved in this extension of the application of the term; for as a matter of fact, the "khátá" or "tamassuk" had always been considered to require a bond stamp.

The word "receipt" had been so defined as to make all receipts for the payment of money in excess of twenty rupees primarily liable to stamp-duty, but an exemption had been provided in favour of all such payments when made gratuitously. The existing law and the Bill as introduced made receipts for money when paid in satisfaction of a debt or demand alone liable; but there could be no reasonable ground for excluding from the stamp liability receipts for money payments when made for due consideration.

The term "settlement" had in the former Bill been described as including "assurances for religious and charitable purposes," but in its technical sense it applied only to dispositions of property made in contemplation of marriage. Such dispositions did not operate as absolute transfers, but were designed to take effect on some more or less remote contingency, and in this respect they might be said to resemble simple mortgages, and were reasonably charged with stamp-duty at the same rate as the latter instruments. Assurances for religious purposes on the other hand operated as conveyances, taking immediate effect, and they were properly classed with deeds of gift. It was a mistake to have included these instruments in the category of settlements when a special and different rate of duty had been imposed on instruments of gift.

He would not have thought this change of sufficient importance to call for special comment had not one of their hon'ble colleagues, a member of the Select Committee, recorded his dissent to the manner in which this item had been treated. His hon'ble friend had not based his objection to the provisions of the Bill in regard to this subject as creating an innovation on the existing law and practice, and this was a point deserving notice; for he (MR. COCKERELL) believed—although a place in the settlement-class of documents was now claimed for these assurances—that at the present time when "deeds of settlement" were subject to duty and "instruments of gift" were not so liable, instruments creating an endowment for religious or charitable purposes were invariably held to be, and treated as, "deeds of gift!"

In the former Bill no provision had been made for enforcing the conditions and directions contained in sections twelve, thirteen, fourteen and fifteen of the amended Bill in regard to the mode of stamping instruments. This omission was supplied by the definition of the condition "duly stamped," the non-fulfilment of such condition bringing an instrument within the penal provi-

sions of chapter IV. Inasmuch, however, as a non-compliance with those directions was perfectly compatible with an honest intention, and even absence of carelessness or indifference to the requirements of the law, on the part of the holder of any instrument, a power had been given to the Collector to remit at his discretion the whole of the penalty incurred where the improper stamping consisted solely of neglect or failure to comply with the conditions of those sections.

The principal amendments contained in the fourth chapter of the Bill were designed to check evasions of the payment of stamp-duties without frequent resort to criminal prosecutions.

The main defect of the deterrent provisions contained in the corresponding part of the former Bill was the too great dependence on a resort to criminal prosecutions which they entailed. There were, it might well be conceived, a very large number of cases in which the neglect to use the proper stamp involved no great criminality, and in regard to which Collectors would be found unwilling to send the offenders before a Magistrate. The revised Bill contained provisions in sections thirty-five and thirty-eight by which Civil Courts were required to realize a much larger fine than that fixed by the former ere unstamped or improperly stamped documents could be admitted in evidence, and Collectors were empowered to levy within certain fixed maximum and minimum limits a similar penalty in respect of instruments sent to or otherwise coming before them, and not being "duly stamped."

The power of instituting criminal prosecutions had been retained, but was absolutely restricted to the two classes of cases specified in section forty-one—(1), where the person responsible for the duty and penalty leviable under section thirty-five refused or neglected to pay the same; and (2), where it appeared to the Collector that the omission to use a proper stamp was due to an intention to evade the payment of the duty chargeable, and thus to defraud the Government.

There was another new provision in this chapter of considerable importance. It was proposed to enact as a third proviso to section thirty-five that the validity of any instrument which had been once admitted in evidence should not be called into question simply on the ground that it was not properly stamped. The question as to whether the improper reception in evidence of an unstamped or insufficiently stamped document constituted a legal ground of appeal against the decision in the case in connection with which such document had been admitted had frequently been raised; and although he believed that the rulings of the superior Courts had generally been against the validity of such ground of appeal, the point was not free from doubt, and it was desirable to have the

question conclusively determined in the new law relating to stamp-duties. It would be clearly inexpedient to allow decisions in suits to be disturbed solely on a question affecting the interests of the stamp-revenue; those interests would, he thought, be sufficiently guarded by the provisions of section fifty-one, which empowered an Appellate Court to take cognizance of and impound any instrument not duly stamped coming before it, although the instrument had been admitted in evidence by the lower Court. The superior Court was also empowered to record a declaration as to the extent of the deficiency of stamp-duty and the penalty which the previous holder of the impounded instrument was liable to pay, and then the Collector would have the same powers for recovering the amount due as he would have had if the instrument had been produced before him originally. It must not be supposed that this provision had been introduced for the purpose of giving a right of appeal, as it were, to the Government in cases where the lower Court, on a full consideration of the question of the proper stamp to be used in respect of any instrument, had made a wrong decision, whilst no such power of appeal was given, in the converse case, to the holder of any instrument. It was not intended to meet such cases, which were comparatively rare, but applied rather to the cases of the frequent occurrence of which he (MR. COCKERELL) had cited a good deal of evidence from the reports of judicial officers when he introduced the former Bill,—cases in which the admissions of instruments not duly stamped were allowed by the Judges of the Courts of first instance entirely through negligence or inadvertence.

The schedules of *ad valorem* and fixed rates of stamp-duty had been amalgamated, and the alphabetical order of arrangement of instruments had been substituted for the classification according to rates; the latter arrangement obviously did not meet the need of a person about to execute an instrument who had no knowledge even as to the kind of duty to which his instrument was liable.

Of course the value of an alphabetical arrangement was lost in any translation of the Act into another language; but as a very large and increasing proportion of the people who were likely to be concerned in the execution of instruments studied the law in the language in which it was enacted, the arrangement of the schedule as now proposed would, he felt confident, be found more useful and intelligible than that which it superseded.

The proposed changes in the amount of stamp-duty to be imposed on instruments would be found to be almost entirely on the side of reduction, and consequently in favour of the tax-paper. Perhaps the most important of these reductions was that made in the case of bonds and instruments similarly

chargeable. The effect of it was to restore, or rather maintain, the two annas rate prescribed by the existing law in respect of bonds for an amount not exceeding ten rupees. The originally proposed four annas rate would be applied to bonds for an amount exceeding ten rupees. It had been thought that the class of persons who chiefly execute these bonds of very small amount possess very limited means, and that to them the extra two annas tax on every such instrument would be a real hardship. The reasons for the proposed reduction in the case of Policies of Insurance had been stated in the Report.

The proposed new rate in the case of instruments guaranteeing the repayment of loans for short periods, obtained on the hypothecation of movable property, gave also a substantial measure of relief, inasmuch as it would cover documents relating to cash advances for a season made on the hypothecation of growing crops, such instruments being at present liable to the duty chargeable on deeds of mortgage.

The Government had thought fit, in consequence of the introduction of the license-tax, which fell exclusively on the trading interest, to give up the proposed extension of the receipt-duty to all money payments exceeding ten rupees; and the abandonment of the proposed increase of duty on Bills of Exchange might be said to have been indirectly due to the same cause.

When he (MR. COCKERELL) introduced the Stamp Bill nearly a year ago, he gave an estimate of the additional revenue to be expected if the Bill became law in the shape in which it then stood; that estimate would, in consequence of the reductions above referred to, have to be largely cut down. The abandonment, for the present, of fresh legislation in regard to Court-fees and the surrender of the proposed increase on Bills of Exchange and extension of the receipt-duty would cause a loss of about ten lákhs, whilst a further deduction from the former estimate of about five lákhs must be made in respect of the alterations in the duties chargeable on bonds and other instruments, so that the net result of the proposed amendments in the duties fixed by the former Bill would be to give an additional revenue of about twelve or thirteen lákhs only, instead of the twenty-seven or twenty-eight lákhs originally anticipated.

ALLUVION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to define and amend the law relating to alluvion, islands and abandoned river-beds. He said that this measure, like the Transfer of Property Bill and the Negotiable Instruments Bill, was intended to form a chapter of the Indian Civil Code, and its object was to state, in a concise, accurate and accessible form, the law relating to the ownership of alluvial lands, of the islands (commonly called

chars) formed in rivers or in the sea, and of abandoned river-beds. In Madras, Bombay and Burma there was no statutory law on the subject : in Sindh there were only some executive rules framed in 1852 by Sir Bartle Frere which were held to have the force of law : in the rest of British India the law was contained partly in legal text-books, partly in the Bengal Regulation XI of 1825 and the Bengal Act IV of 1868, sections 2 and 4, but chiefly in the numerous decisions of the High Courts and the Judicial Committee of the Privy Council with which the former enactment was encrusted.

Bengal Regulation XI of 1825 provided rules for land gained from a river or the sea by gradual accession ; for avulsion ; for islands formed in navigable rivers and the sea ; for islands formed in " small and shallow rivers, the beds of which with the julkur [or] right of fishery might have been heretofore (*i.e.*, before 26th May, 1825) recognised as the property of individuals." But it did not provide for the case when an alluvial deposit took place on a site of which, though it had been submerged, the ownership was ascertained. It declared that an island formed in a navigable river belonged to the adjoining proprietor or to the Crown, according as the channel between it and the adjacent land was fordable or unfordable. But it did not define " fordable," nor state the time with reference to which the question of fordability or non-fordability was to be decided, nor show when an island could be said to be formed. It declared that an island formed in a navigable river should, where the channel was fordable, be an accession to the land " of the person or persons whose estate or estates might be most contiguous to it." But this did not, apparently, provide for cases where the island was partly on one side and partly on the other of the thread of the stream, nor for cases where there were several riparian owners, and the island could not be said to be nearer to the property of one than to that of another.

The Regulation was also deficient in not embodying the doctrine of what Roman lawyers called *agri limitati*, according to which, when land belonging to the State was granted in plots with a fixed area, and the plots were enlarged by alluvion, the increase did not become the property of the grantees. Such a provision was especially required in the Presidency of Bombay.

The Bill attempted to supply these defects.

As regards the rights of riparian owners to islands, the Bill applied the same rules to an island formed in the sea or a navigable river when the channel between it and the adjacent land was fordable, and to an island formed in a river which was not navigable.

Lastly, the Bill declared that when any river formed a new course, abandoning its ancient bed, the owners of the ancient banks were entitled to the an-

cient bed in proportion to their respective frontages. It was believed that this was in accordance with the existing law as declared by the High Court at Fort William, and it seemed less likely to encourage litigation than to provide (as was done by some systems) that the owners of the land newly occupied should take the ancient bed, each in proportion to the land of which he had been deprived.

The Bill advisedly left untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion; to the rent payable in respect of such lands, and to the rights of tenants and mortgagees to alluvial lands. Such matters were obviously more fitly provided for in special enactments dealing with revenue, rent, mortgages and leases.

In conclusion, he had only to state that a rough draft of the Bill had been in circulation to the Local Governments and Administrations for the last six months, and a valuable body of commentary had been the result. To the Lieutenant-Governors of Bengal and the Panjáb and the Chief Commissioner of Assam, MR. STOKES, as draftsman of the Bill, felt personally indebted for the careful criticisms with which they had favoured him; and if he obtained leave to introduce the Bill, they would see that he had given due attention to those criticisms.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 26th September, 1878.

SIMLA;
The 5th September, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The Meeting which was originally fixed for Thursday, the 15th August, 1878, was adjourned to Thursday, the 5th September, 1878.

G. C. B. Press Simla.—No. 262 L. D.—16-9-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 2nd October, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.
Lieutenant-General the Hon'ble Sir S. J. Browne, K.C.S.I., C.B., V.C.
The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.

ALLUVION BILL.

The Hon'ble MR. STOKES introduced the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds, and moved that it be referred to a Select Committee composed of the Hon'ble Sir Andrew Clarke and the Hon'ble Messrs. Thompson, Colvin, Thornton, Cockerell, Evans and himself. He said that, about a month ago, when he obtained leave to introduce this short, but important, Bill, he had described its objects and mentioned its principal provisions. Since then, the Bill had been circulated to Hon'ble Members, and he proposed now to explain briefly a few of the details of the measure which might, perhaps, be thought to require justification.

First of all, the definition of an alluvial island, or, as it was called in Bengal, a *char*, was made to include land arising in a river or lake, submerged in the wet season and visible only in the dry. At first sight this, so far at least as regarded islands formed in public navigable rivers, seemed at variance with a ruling of the Calcutta High Court (in the case of *Mahárání Náráyan Kumárí* v. *the Nawáb Názim*; 4 Suth. W. R. 41), which was thus given by Mr. Markby—whose recent

loss to India was, indeed, a gain to England—in his Lectures on Indian Law, page 63:

"As to when a *char* or island can be said to have been formed, it has been considered that and adjoining" [an obvious misprint for "arising in"] "a public navigable river cannot be considered as an accession to the adjoining estate, which is regularly submerged in the wet season and is visible only in the dry."

MR. STOKES had carefully considered that decision and, although the report of the case was extremely imperfect, he thought that what the judges (Steer and Campbell JJ.) really decided, or meant to decide, was that an alluvial deposit, which had not risen high enough to become cultivable in the dry season, remained part of the river-bed and was not a *char* within the meaning of Bengal Regulation XI of 1825; but that, if the deposit had risen to that height, the fact of its being submerged in the rains would not prevent its being a *char*. Although this was perhaps a piece of judicial legislation (for, as he read it, the Regulation applied to islands which were not, as well as to those which were, cultivable), it seemed to him, if he might say so, a reasonable ruling, and in accordance not only with the decision of a great American judge, but also with the facts and requirements of such cases.

For instance, Sir Ashley Eden, after expressing his opinion that the mere fact of an island being submerged in the wet season should not prevent its being an island for the purposes of the Act, said: "There are many islands yielding crops, and therefore of value to the possessor, which are for years only visible during the dry season." Half the *chars* in the Brahmaputra, which were valuable enough and a source of considerable revenue, became submerged in such floods as those of this season, but they did not on that account cease to be islands. This was the opinion of the Chief Commissioner of Assam. To the same effect wrote the Lieutenant-Governor of the North-Western Provinces, where there were many islands which, though submerged in the rains, were ploughed up early in the cold weather, and yielded a harvest in the spring. So in the Madras Presidency the lankas in the Godávari and Kistna were, MR. STOKES believed, nearly always covered by high floods, and yet were both extensive and valuable during the greater part of the year. Whether for the purposes of the Act the term "island" should not be restricted to cultivable land was a point he would submit to the consideration of the Committee, to which he hoped the Bill would be referred.

The definition of "island" went on to exclude land in tidal rivers and the sea, submerged by the flow of ordinary tides. This was in accordance both with judicial decision (14 W. R. 352) and the opinions of the Local Governments. Sir Ashley Eden, for instance, said that "land which is only visible for six hours

at a time need hardly be treated as an island for the purposes of this Act. It might, however, be well to declare that no right of property in such lands vests in any other than the Crown (6 Bengal 347-8)." The Bill, section 10, might easily be enlarged so as to make that declaration, if the Committee thought it desirable: it certainly was not necessary.

The definition of "thread of the stream," with reference to which rights of riparian owners to *chars* were to be determined, had caused him much thought and trouble. One thing seemed certain, that the Indian rivers, and even different parts of the same river, were so various in their natures—some with permanent banks, others with one or both banks constantly shifting, others with one or more streams, each of which was fairly entitled to be called the main stream, others magnificent in the rains, but in the dry season dwindling down to thin streaks of shallow water—that no single definition would answer. He had therefore ventured on what was, so far as he knew, a novelty in drafting, and given three definitions of this expression :—

(*a*) the middle line of the main stream during the dry season;

(*b*) the middle line between what were the shores on each side when the water was at its average height;

(*c*) the middle line of the particular channel in which the island referred to arose.

The first definition was said to be appropriate to all the Panjáb rivers, and was, therefore, recommended by the Panjáb Government. It seemed to suit all the rivers in the Bombay Presidency, large rivers like the Ganges and the Ghághrá in the North-Western Provinces, and rivers in the Berárs that ran throughout the year. It was also recommended by the Chief Commissioner of Assam.

The second was the definition adopted in Europe and America, where the river-banks were, as a rule, well-defined and permanent. It would suit such rivers in India as the Lower Jumna, the Sarjú and the Gomatí, so far at least as the Gházipur district was concerned. This definition would also apparently apply to most of the rivers of the Madras Presidency. At least the local Board of Revenue thought that "the centre of the stream in ordinary floods will be a better and fairer guide for determining the rights of land-owners to islands forming in a river."

The third definition was suggested by Sir Ashley Eden.

"The question," he said, "is one of extreme difficulty, looking to the character of the rivers of Lower Bengal. But on the whole the Lieutenant-Governor is disposed to think

that it would be best to take the centre of the stream as ascertained by survey in each case of doubt, the stream being understood to mean the particular channel in which the island formed and the measurements being taken from the nearest permanent land on either side, whether itself island or mainland."

The Local Governments were empowered to declare by notification in the Gazette which of those three definitions should be deemed to be in force with regard to any river or any part of any river; in the absence of such declaration the first would apply. The Local Governments might also declare what should be deemed, for the purposes of the Act, in the case of each river, the "main stream" and the "dry season."

So much for the definitions. As to the operative part of the Bill, provision was made for alluvial land formed on the shores of lakes, as to which the present Regulation was strangely silent. The Bill in this respect embodied the local custom, at all events, in the case of the great Suráhá Tál in the Balliyá tahsíl, North-West Provinces, which had, as he was informed by the Collector of Gházipur, diminished by half its area since the revenue survey in 1837. So in America, where a navigable lake receded gradually and insensibly, it had been held that the derelict land belonged to the adjacent riparian owners.

He had drawn section 6 of the Bill so as, he hoped, to make it clear that when the channel between the bank or shore and a newly-formed island was fordable *at any point*, it should become the property of the owners of the bank or shore in proportion to their frontage, whether the actual channel opposite the frontage of any particular owner were fordable or not. This, no doubt, was opposed to the doctrine of what was called "the nucleus of accretion" as laid down by the High Court at Fort William in *Ghulám Ali Chaudhri* v. *Gopál Lál Thákur*, 9 W. R. 401; but it seemed the fairest way of treating the matter. The owner to whose estate a large *char* became first attached had, as Sir Ashley Eden observed, no equitable right merely on that account to extend his estate along the face of his neighbours' lands; the effect of such extension often being, when the channel on their frontage silted up, to cut them off from the river altogether. MR. STOKES was sorry to deviate from any ruling of the High Court, but it seemed to him that Sir Ashley Eden's reasoning was unanswerable.

To the section declaring that riparian owners were entitled to an alluvial island in proportion to the frontage which they respectively had opposite the island, he had lately added an explanation of the word "opposite." He confessed he had thought that "opposite" was as clear and simple a word as existed in the English language. But it seemed he was wrong. The Madras Board of Revenue observed that the word in question "is not defined,

and asserted that "it would be impossible to settle conflicting claims without a more precise expression of the intention." One of our ablest English judges (Mr. Justice Brett) had recently declared that it was not right for judges to profess not to know phrases in the English language which were well known in English society. But this doctrine was constantly disregarded in India. In the very last number of the Indian Law Reports he found the learned Chief Justice, who presided with such dignity over the High Court at Allahábad, asking the meaning of the expression "where a decree is appealed against," and calling it not only "obscure and doubtful," but "rather unfortunate and ambiguous." The sad necessity of precluding, if possible, such criticism would account for much in our Indian laws that would otherwise be rightly regarded as superfluous and childish.

Lastly, he had to remark that the Bill contained no provisions as to the rights of mortgagees and lessees to alluvial accretions to land comprised in their mortgages and leases. This omission was not an oversight, for alluvion was only one form of accession to immoveable property, and therefore he had thought, and thought still, that this matter might more fitly be provided for by the chapters of the Transfer of Property Bill, which dealt respectively with mortgages and leases of land. Those provisions might run as follows. First as to mortgages:—

"If, after the date of the mortgage, any accession is made to the mortgaged property, the mortgagor upon redemption shall, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, be entitled to such accession."

"If, after the date of the mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession."

Then as to leases:—

"If, during the term any accession is made to the property leased, such accession shall, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, be deemed to be comprised in the lease."

In conclusion, he wished to express his grateful acknowledgments of the counsel received from his honourable friend Mr. Thornton during the preparation of this difficult Bill. Mr. Thornton possessed a practical acquaintance with the fluvial phenomena of the Panjáb, and, in the absence of such an adviser, a mere lawyer like himself would never have been justified in attempting to draft so peculiar a measure.

The Hon'ble MR. THORNTON said that there was probably no portion of the territories under His Excellency's government which suffered so con-

stantly and so extensively from the caprices of its rivers as the province of the Panjáb. Having been for some years connected with the administration of that province, and having had some practical experience in dealing with cases of alluvion and diluvion, he deemed it right to trouble the Council with a few remarks on the subject of the Bill just introduced. And the particular point he proposed to take up on the present occasion was the consideration of the two following questions,—*first*, whether the circumstances of the Panjáb and the state of the river-law of that province were such as to call for legislation; and, *secondly*, assuming that legislation was called for, whether the general principles of this Bill were sound and suited to its requirements. He felt especially called upon to consider these two questions, because he found, from perusal of the official correspondence on the subject, that an attempt had been made on the part of one or two conscientious officers in the Panjáb to denounce the present Bill as a mischievous and unnecessary piece of legislation.

That the subject of the present Bill was, in the Panjáb, an exceedingly important one, would be evident to any one who glanced at the map and was at all acquainted with the character of the country. Its plains were traversed by seven large rivers. Each of these rivers, as it emerged from the sub-Himalayan ranges, flowed no longer in a well-defined and permanent channel, but wandered, almost at will, through broad alluvial tracts; while the stream, which in the cold season shrinks into insignificance, winding, in one or more small channels, through an expanse of sand, becomes in the hot weather and rains a wide, rapid and resistless flood, cutting into its banks in most eccentric fashion, and sometimes altering its course for miles. It followed that on the banks of all the Panjáb rivers important changes were annually occurring. Whole villages would be swept away on one side the stream, while long stretches of alluvial soil would be thrown up on the other, or large islands would be formed in the bed of the river. These newly-formed lands were often very fertile, and the islands, though liable to be submerged in the flood season, were often valuable as producing excellent winter crops, and were not unfrequently the objects of keen contention between rival cultivators. Besides the great rivers there was a multitude of smaller streams and nullahs—such as the *Markanda*, the *Gaggar*, the *Chakki*, the *Bhimbar*, the *Sohán*, the *Harroh*, the *Kúram*, the *Gúmal*, and others, flowing from the Himalayan or Sulimáni ranges—all of which were subject to great increase of volume from the melting of the snows or accumulation of the rainfall, the result being that they too caused annually considerable alteration of area in the villages adjacent to them. But, perhaps, a better idea would be formed of the situation and its effects when he mentioned that the aggregate length of non-permanent river-bank liable

to erosion by the Panjáb rivers was believed to exceed 4,000 miles, and that the aggregate amount of culturable land thrown up on the banks or in the beds of the same rivers for the four years ending in 1876-77 was estimated to amount to 480,000 acres ; even this statement, however, gave a very inadequate idea of the extent of alluvial formations resulting from the annual floods, because, under the rules in force for assessing alluvial lands, no notice was taken by the Revenue authorities of an increment unless it exceeded 10 per cent. of the area of the estate affected.

It would be admitted, he thought, to be a matter of extreme importance, that the law regulating the ownership of these extensive tracts of newly-formed culturable land, or of lands cut-off or abandoned by changes in the course of rivers—whether that law was based on custom, or was the result of statutory enactment—should be clear and complete and suited to the circumstances of the time and the locality. Let us see, then, whether the present state of the law regulating these matters in the Panjáb answers to the above description.

The laws which governed cases of alluvion in the Panjáb were, *first*, certain well-established and recognised customs prevailing in the villages subject to river-action ; and, *secondly*, in cases not governed by custom, the Bengal Regulation XI of 1825, and the often conflicting decisions of High Courts of Judicature with which that Regulation was encrusted.

With regard to the customary law, the customs which prevailed, so far as they had been ascertained, were three in number. There was, *first*, the "deep-stream rule"—a custom known by various local names, *e. g.*, *had se-kandari*, *kishtibanna*, or the euphonic appellation *kach-mach*. Where this usage prevailed in its extreme form lands which, from a change in the course of the deep-stream, became transferred from one side of the stream to the other changed owners—even though the land so transferred was intact or identifiable—and islands or alluvial lands belonged to the owner of the nearest bank on the same side of the deep-stream, without reference to former ownership of site. The *second* custom was a modification of the first, and was perhaps the most common. Under its provisions the deep-stream was *ordinarily* regarded as the boundary of the village, but an exception was made to the general rule of transfer of ownership, when the land transferred was identifiable—that is, recognizable by physical features or visible land-marks. The *third* custom was known as *warpar*. Under its operation the boundaries of opposite riverain estates were assumed to be permanently fixed in the river-bed,—so that, whatever changes might take place in the course of the deep-stream, the ownership of the soil remained the same.

With regard to the local extent of the abovementioned customs, the first two prevailed, he believed, more or less on the banks of all the Panjáb rivers except the Indus. The third was, he believed, in force in all villages on the banks of the Indus, and was to be found also, though less frequently than the two forms of the deep-stream rule, on the banks of the other rivers.

These customs were not only practically in force among the people, their existence was, under certain circumstances, legally presumed. For, under section 16 of the Panjáb Land-Revenue Act, 1871, a river-custom duly entered in the settlement record of a village was presumed to be in force, unless the contrary was proved.

Of the three customs, the first—that is the deep-stream rule, pure and simple—was obviously most inequitable. It did not appear to be a custom of remote antiquity. It would seem to have grown up during that period of anarchy which intervened between the decay of the Moghal Empire and the advent of British rule. During that period the dominant principle of ownership was—"let him keep who can," and under such circumstances land which became separated from its proprietor by the intervention of the deep-stream was as good as lost to him. The deep-stream rule was thus the recognition of an unpleasant fact rather than the prescription of a convenient arrangement. The custom is denounced by one of the Panjáb Commissioners as "monstrously unjust and irrational," and its evil effects are pointed out by Mr. J. B. Lyall, Commissioner of Settlements in the Panjáb, in the following terms :—

"It is generally admitted that the deep-stream rule is a very bad one. I have myself seen how very unfairly the pure form of it works in the Gurdáspur district : it gives to one village for a few years more land than they can make use of, and leaves the zamíndárs of opposite villages sitting idle on the bank waiting for the river to turn. Government loses revenue, and the value of property in river villages is depreciated."

But not only was this custom inequitable on the face of it; it was, he believed, heartily disliked, and would be gladly abandoned by the great majority of those affected by it, in fact by all except the few who happened, for the time being, to be gainers by its operation. In the present state of the law, however, to effect a change in the custom would be difficult, if not impossible, because, by the operation of section 16 of the Panjáb Land-Revenue Act above quoted, the custom was, practically, stereotyped, as its abandonment might be successfully resisted by every individual interested in its preservation. A very interesting account of the vain efforts of a riparian community to shake itself free of the deep-stream rule was given by Colonel McMahon. It was a case which occurred a few years ago in the Hoshiarpur district. In that district was a river tract comprising 158 villages. In those villages the deep-stream rule was in force,

and was duly recorded in the village-papers. But the bulk of the inhabitants were anxious to abandon the deep-stream custom and adopt a more equitable system of dealing with alluvial lands—similar in principle to the rules contained in the present Bill. Accordingly the village notables assembled and a document was drawn up declaring that the deep-stream custom should no longer be in force. This document was signed by the representatives of all the 158 villages, except three. It happened shortly after that an alluvion case occurred in which one of the three "opposition" villages was concerned. The Court of first instance treated the deep-stream rule as abandoned and decided accordingly. But the case was appealed to the Chief Court. The Chief Court was obliged to reverse the decision, holding (very properly) that the declaration of the 155 villages was not binding on the minority; but when recording a decision in their favour, the Court remarked as follows:—

"We regret that the custom of *kishtibanna* has not been lawfully abrogated, as we are fully sensible of its evil effects; but it is the duty of the Court to apply the law as it stands, and not to usurp the functions of the Legislature."

The second custom—that of the modified deep-stream rule—was more equitable in theory, but in practice was almost as unsatisfactory as the first. Mr. Lyall said of it:—

"The question whether a plot of land is recognizable or not, that is whether it is an old bank or island rather damaged by flood water, or a newly-formed bank or island, is often a fine one, and not easy to decide; yet the whole existence of an estate into which the river is cutting may depend upon its stopping the advance of the opposite estate by proving a title to some such plot in the river. The most unscruplous claims and counter-claims are advanced every year and are supported by the rankest perjury. Petty officials are bribed and the facts are so obscured that a long trial often ends in a wrong decision, or a right one is set aside in appeal."

The third custom—that of fixed boundaries unaffected by changes in the position of the deep-stream—was generally admitted to be the most equitable, and the best in every way, provided the boundaries in question were properly surveyed and mapped. It was, in fact, almost identical in principle with the provisions of the Bill.

Now, assuming for argument's sake that all cases of river-law coming before the Courts of the Panjáb were governed by the above-mentioned customs, he would still be decidedly of opinion that legislation was called for. And why? To enable riparian communities who wished to abandon the deep-stream custom and adopt a more equitable rule to do so.

But, in point of fact, custom did not regulate all such cases coming before the Courts. He did not wish to trouble the Council by minute references to

judicial decisions; but cases could be quoted in which the parties admitted that there was no established custom in force in their locality. Then, again, there were cases in which it was proved that the deep-stream custom—though it had prevailed formerly—had fallen into desuetude. In the decision of all such cases, that is in cases coming from localities where no custom had been established, or in which formerly-existing custom had fallen into desuetude, the Courts were bound by the Statute-law, that is by Regulation XI of 1825. But how obscure and incomplete that enactment was had been amply shown by the hon'ble the mover. It would be sufficient here to mention that the exact meaning of one important word in section 4 of the Regulation—the word "identified"—was finally settled by the Privy Council only three years ago.

But it had been urged on him by the opponents of legislation that it would be better instead of tinkering Regulation XI of 1825 or replacing it by a new enactment derived more or less from Western Codes to let its obscurities be cleared up gradually by judicial interpretation, and its defects be remedied by decisions of Courts of law based upon principles of "justice, equity and good conscience." Now, with regard to the first of these recommendations, he need only remind the Council of the fact that the judicial settlement of the meaning of *one* doubtful phrase in this Regulation had taken precisely half a century, and that at the same rate of progression the authoritative interpretation of this important enactment would not be completely ascertained until the year A.D. 2150, or thereabouts. As for the other suggestion—namely, that our river-laws should be evolved from the moral consciousness of judicial officers—he need only refer to the correspondence which had taken place in reference to the present Bill, from which it would be evident that the ideas of the most experienced and conscientious officers as to what was equitable in alluvion cases were almost as capricious as the action of a Panjáb river. For instance, with reference to section 5 of the Bill, one experienced officer expressed the opinion that for the Government to assert a right to an island in the bed of a Panjáb river would be a proceeding at once unjust and inexpedient. Another experienced officer regards this section as a most excellent law—one that was much required and entirely in accordance with the practice of previous Governments. One Commissioner, as he had already mentioned, denounced the deep-stream rule as a "monstrous and irrational" custom, and his opinion was shared by many others; but another Commissioner, he found, spoke of the rule as "safe, just and popular, and better than any that would be substituted for it."

Having regard then to all the circumstances of the case,—the unsatisfactory condition and transitional character of the customary law of the province; the obscurity and incompleteness of the Statute-law; the conflicting decisions of the High Courts, and the difference of opinion amongst experienced officers as to

what was equitable—he had arrived at the opinion that legislation in the matter of alluvion and diluvion was greatly needed in the Panjáb.

He would now proceed to consider very briefly the second question—namely, whether, on the assumption that legislation was required, the general principles of the proposed enactment were applicable to the Panjáb?

To that question he was prepared, unhesitatingly, to give a reply in the affirmative and for the following reasons: In the first place, he found that by its provisions the customs of the Panjáb were duly recognized and presumed, under certain conditions, to be in force. In the second place, the existing Statute-law, which was greatly in need of revision and improvement, had been materially amended and improved. In the third place, the rules for regulating the ownership of alluvial increments appeared to be not only in accordance with general principles of equity, but in accordance with that one amongst the Panjáb customs which was generally admitted to be the best.

While, however, he welcomed the legislation now proposed, and believed it to be generally suitable, he ventured with deference to express the opinion that it was defective in what appeared to him a very important particular,—in that it did not make any suitable provision for getting rid of the difficulty to which he had adverted. It made no provision to enable riparian communities suffering under the curse of the deep-stream rule to abandon that rule and adopt the provisions of this Bill. It seemed to him that this defect would be remedied if a provision were inserted enabling the Local Government—when satisfied that there was a general wish among the riparian communities of a locality to abandon the deep-stream rule—to give effect to their wishes,—that is to say, by making a scientific survey of the river-bed, effecting an equitable adjustment of the rights of riparian owners *inter se*, and of State rights, and placing the results on record—thus changing the shifting and unsatisfactory boundary of the deep-stream into a permanent and satisfactory one. That this plan was a feasible one he was in a position to assert with some confidence, because it had been actually carried out in respect to the riparian villages of the river Indus, and, he believed, also in some localities on the river Ravi.

He would not trouble the Council at the present time by going into all the provisions of the Bill, as such details could be more conveniently considered in Committee; but he would take leave to notice the provisions of one section, namely, section 6, clause (*c*), which provided that—"When an island is formed in a river, and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed

to be divided by such thread." This clause prescribed a rule of decision which he believed would be found, so far as the Panjáb rivers were concerned, to be absolutely impracticable.

The Hon'ble MR. STOKES had only to make a few remarks with reference to what had fallen from his honourable friend Mr. Thornton. First, with regard to making provision for a Government survey of river-beds and the marking out of what should be deemed the thread of the stream. The Revenue and Agricultural Department had put the question to all Local Governments as to whether those surveys should be carried out, and he believed that most of these Governments were of opinion that the expense would be so great as to render such surveys practically impossible, and that, even if they were made, they would be of little or no use. To the same effect was the opinion of Mr. Justice Innes of the Madras High Court, to whom the Legislative Department was under so many obligations. That learned Judge said :—

"The expensive process of causing surveys to be made of river-beds and marking out, by pillars, bearings or otherwise, what should be deemed to be the thread of the stream would, I think, be throwing a great burden upon the public, not in accordance with the Indian system of making the suitor pay for justice. It would also, I conceive, be infinitely more expensive and not in any respect more effectual than making measurements of the river-beds as occasion requires in spots where disputes arise."

The Calcutta Board of Revenue said that—

"The changes in rivers in some parts of the country are so considerable and frequent that the Board do not think surveys and pillars would be of any use. A pillar put up to mark the position of the thread of the stream, as defined in the letter from the Government of India, might be found to be a long way from it in the following year."

The Lieutenant-Governor agreed with the Board that pillars would be of little use in Lower Bengal. To the same effect was the opinion of the Panjáb Government.

With regard to clause (*c*) of section 6 of the Bill, which provided that—

"Where the island is formed in a river and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island,—"

in the first place he must point out that the case for which this clause provided seldom occurred, for this obvious reason, that the thread of the stream was the part of the stream which ran with the greatest rapidity; consequently, alluvial deposits as a rule took place only on one side of the thread, where the current

was retarded by the friction of the banks. The provision, however, had been inserted in order to make the Bill complete. But he had further to observe that the clause in question followed the rule laid down by one of the greatest authorities on alluvion law—Chief Justice Shaw of Massachusetts—and he would read to the Council what that learned Judge had said on the matter. Referring to a case of *Ingraham* v. *Wilson*, the Chief Justice observed:—

"It recognizes the rule of the Common Law that the property in the soil of rivers not navigable, subject to public easements, belongs to those whose lands border upon them; and from this right of property in the soil in the bed of the river the Court deduce the right of property in an island which gradually rises above the surface and becomes valuable for use as land. Assuming the thread of the stream *as it was immediately before such land made its appearance*, this rule assigns the whole island or bare ground formed in the bed of the river, if it be wholly on one side of the thread of the river, to the owner on that side; but if it be so situated that it is partly on one side and partly on the other of the thread of the river, it shall be divided by such line—*i. e.*, that line which was the thread of the river immediately before the rise of the island—and held in severalty by the adjacent proprietors" (*Trustees of Hopkins Academy* v. *Dickinson*, cited in Angell on the Law of Watercourses, 6th edition, p. 49).

Chancellor Kent had also laid down the same law in his *Commentaries*, 11th edition, vol. III, page 542, where he says that islands situated so as to cover the middle of a river "would belong in severalty to the owners on each side, according to the original dividing line or *filum aquæ* continued on from the place where the waters begin to divide." MR. STOKES might here remark that American lawyers were considered high authorities on this subject, the Courts of the United States having had to consider questions relating to the law of alluvion to a far greater degree than the Courts of other countries.

It might, no doubt, be sometimes difficult to obtain satisfactory evidence as to what was the thread of the stream immediately before the appearance of a *char*; but the Courts would do their best: no other plan was possible; and he inferred from the absence of objection on the part of the Lieutenant-Governor of Bengal and the Chief Commissioner of Assam, that this clause expressed the rule by which they would ascertain the rights of riparian owners in the rare cases to which it had reference. As to the alleged impracticability of applying this rule to the Panjáb rivers, MR. STOKES would set-off against the opinion of his hon'ble friend Mr. Thornton that of the Deputy Commissioner of Montgomery (Mr. Macauliffe), who said that the system described in section 8 (now section 6) was "quite correct, and not opposed to the ancient custom of India."

His Honour THE LIEUTENANT-GOVERNOR wished to say a few words in addition to the remarks which had fallen from Mr. Thornton. He differed from him to some extent in thinking that the present was the time to dis-

cuss the respective merits of the different customs which prevailed regarding the disposal of alluvial land on the banks of the Panjáb rivers. It was quite true that, theoretically, various opinions might be held; but he believed that the people who were closely affected by the customs in question were the best judges as to whether they desired to have them altered or not, and he should deprecate any authoritative interference in the present enactment with any existing and well-established custom. The chief merit of the Bill, in his opinion, was that it maintained local usages, and also respected the provisions of the Panjáb Land-Revenue Act of 1871, under which the record in the papers of a regular settlement of any custom was presumed to be true. As he understood section 10 of the Bill, the customs which had been recorded at settlement in all the districts of the Panjáb which were affected by the rivers would be presumed to be true, and no further proof would be required of the persons who alleged that the custom existed than the production of the record prepared at the settlement.

The Hon'ble MR. THORNTON said that he believed his honourable friend the Lieutenant-Governor had somewhat misunderstood him. He did not for a moment intend to say that we should by legislation or otherwise interfere with existing custom so long as it was approved by the majority of those affected by it. But when a custom besides being in itself inequitable was repugnant to the views and wishes of almost all of those to whom it applied, then he ventured to submit that we should not stereotype that custom for ever, but make an arrangement by which the general wish of the community concerned might be given effect to.

The Hon'ble MR. STOKES ventured to doubt whether the love of the Natives for their local usages had not been slightly exaggerated, and whether it was altogether expedient to legislate so as practically to petrify all those usages, and thus to prevent the natural modification which they would otherwise have received. The Commissioner of Hissar (Colonel McMahon), in an able paper sent in by the Panjáb Government, proposed to omit from the Bill the clause saving usage. Colonel McMahon thought we had gone quite far enough in our laudable desire to give free scope to local customs, and that there was now some fear "lest we should go too much in the other extreme and stereotype customs which are unjust in themselves and which the people, were they consulted, would wish to modify or abrogate." For instance, on the Beas, there was that local custom (called *kishtibanna*), according to which, when the river suddenly changed its course, the proprietary and cultivating rights to all the land transferred from one bank of the deep-stream to the other were, by this accident, transferred from the former proprietors and cultivators to new proprietors and cultivators on the other side of the river, even though the

change in the course did not carry away the surface of the ground or destroy its identity. Nothing could be more unjust, or irrational, or injurious both to the riparian owners and the land-revenue. Nevertheless in the Hoshiarpur case (reported in the *Panjáb Record*, No. 56 of 1869), the Chief Court of the Panjáb, fettered by our Act XXXIII of 1871, section 16, upheld this usage, though saying; as Mr. Thornton had told us: "We regret that the custom of *kishtibanna* has not been lawfully abrogated, as we are fully sensible of its evil effects."

In the Presidency of Madras, where he had lived for two years, and with the local laws of which he had, as Reporter to the High Court, become tolerably familiar, he could say positively that the Natives would have discarded some of their most peculiar usages had they not been foiled in their attempts to do so by the conservatism of the late Court of Sadr Adálat. In Malabar, for example, where property was held by those indissoluble family unions called *tarawáds*, where land acquired by the individual exertions of any member, which he did not dispose of in his lifetime, belonged to the union, there had been constant, but unsuccessful, efforts to change the local usage for the less strictly corporate system of the Mitákshará. In the rest of the Presidency of Madras (excluding South Canara), the Hindús were, speaking roughly, under the law of the Mitákshará, according to which, in the case of ancestral immoveable property, not only a man's sons, but his grandsons and great-grandsons, were co-proprietors with him and had vested interests during his life. But in Lower Bengal, where the Hindús followed the Dáyabhága, a man's sons were not joint owners with him, and he might alienate even ancestral land without their assent. It was obvious that, of the two, the Bengal system was far the more favourable to individual energy, social progress and commercial activity; and when he was in Madras in 1862-64, he had learned on the best authority that the Natives under the Mitákshará were constantly striving but, owing to the higher Courts, striving in vain, to deal with their property as if they were under the Bengal law. So much for the law of Property. In the case of Personal Relations similar phenomena had occurred: for instance, he found from Mr. J. D. Mayne's masterly and interesting book on *Hindú Law and Usage*, page 51, that among the Tottiyárs, a caste of Madura, it was still the custom of brothers, uncles, nephews and other relations to hold their wives in common, and their priests compelled them to keep up the custom if they were, as was sometimes the case, unwilling to do so. What with legislatures, Courts and priests, all acting, no doubt, from the most benevolent and conscientious motives, the struggles of the many Indian representatives of the Primeval Man to raise themselves in the scale of civilization were not as successful as might be desired. Sir John Lubbock, Mr. Tylor and other students of primitive culture would perhaps be gratified by the artificial preservation of interesting specimens of archaic usage; but

MR. STOKES hardly thought that this was the function either of the legislatures or the Courts of British India. Colonel McMahon was not alone in questioning the expediency of saving, in all cases, local usage as to alluvion. Thus Sir George Couper informed us that Colonel MacAndrew and the late Judicial Commissioner of Oudh, Mr. Charles Currie, two most experienced officers, would omit the clause intended to have that effect: the former on the ground that it was a mere peg on which to hang lawyers' arguments and was unnecessary; the latter on the ground that the interpretation of local usage caused uncertainty and confusion, and that the proof of it required was so stringent that it was practically impossible to substantiate it. On the whole, Mr. STOKES would be inclined to confine the operation of the clause to the Panjáb, which was so pre-eminently a *pays de coutumes*, and where the Local Government was still so strongly in favour of maintaining local usage intact.

The Motion was put and agreed to.

The Hon'ble MR. STOKES moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments should think fit.

The Motion was put and agreed to.

CENTRAL PROVINCES EVIDENCE BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to make better provision for recording evidence in the Central Provinces. He said that the new Civil Procedure Code (Act X of 1877) prescribed (section 182) that in appealable cases the evidence of witnesses should be taken down in a narrative form in the language of the Court by or in the presence and under the personal direction of the judge. Act VIII of 1859, the old Civil Procedure Code, had been extended to the Central Provinces by an executive notification with certain exceptions and provisoes. One of those was that for so much of the Act as required that the whole of the evidence should be taken down in the language in ordinary use, there should be substituted a rule in force in Oudh, to the effect that an intelligible note of the essential points of the evidence of each witness should be taken at the time and in the course of oral examination by the officer who tried the case, in his own language. The old Code being repealed by the present Code, that notification fell with it. The Chief Commissioner had now applied to the Government of India to take the necessary steps towards legalizing the recording of evidence in English or in the vernacular of the judge, according to the practice which had hitherto prevailed in the Central Provinces under the executive notification. The condition of the Central Provinces was somewhat peculiar as regarded the languages used

in the different local Courts. Hindí, Hindústání, Maráthí, Uriya and Telugu—the last a non-Aryan tongue, the rest widely differing from one another—were all in use in different tribunals, and the Native judges of the subordinate Courts were often unable to write fluently the language of the district in which they were employed. The Government of India, in consideration of this and of the fact that the present system had now been in operation in the Central Provinces for about sixteen years and was believed to have worked well, had decided that it was not expedient to compel a change in the procedure hitherto followed in this respect in the Central Provinces, and the present Bill had accordingly been prepared to legalize the existing practice.

The Motion was put and agreed to.

DESTRUCTION OF RECORDS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to authorize the destruction of useless records in Courts in British India. He said that the object of this Bill (which owed its origin to a difficulty felt in the High Court at Bombay) was to give the various High Courts power to dispose of the masses of useless records, books and papers which, from day to day, were accumulating in those Courts and in the Courts subordinate to them. Legislation was necessary to give this power, as the documents proposed to be destroyed were in some cases private property. The three local legislatures might, no doubt, provide for the Courts within their territories respectively; but as there would still remain certain Provinces for which none of those legislatures could provide, and as it seemed desirable to have one general law applicable to the whole of India, the Government of India had taken the subject into their own hands.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 16th October, 1878.

SIMLA,
The 2nd October, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Thursday, the 26th September, 1878, was adjourned to Wednesday, the 2nd October, 1878.

Govt. C. B. Press, Simla—No. 315 L. D.—17-10-78—230.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 16th October, 1878.

PRESENT:

His Excellency the Viceroy and Governor-General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
Lieutenant-General the Hon'ble Sir S. J. Browne, K.C.S.I., C.B., V.C.
The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble G. H. M. Batten.

VERNACULAR PRESS ACT AMENDMENT BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill to amend Act No. IX of 1878 (*for the better control of Publications in Oriental languages*) be taken into consideration. He said :—"When I obtained leave to introduce this Bill, I explained the circumstances under which the Bill had been framed and the particular point on which the Secretary of State had desired that the Act passed in March last should be amended, and I said that I would take the opportunity of moving the further consideration of the Bill, to offer a few remarks with reference to the working of the Act which it is now proposed to amend, and also with reference to the discussions which have taken place regarding that measure since it was passed. Seven months have now elapsed since the Vernacular Press Act became law, and, with the exception of certain proceedings which, owing to an unfortunate misapprehension, were instituted in one Province regarding certain writings which had been published before the passing of the Act, but which proceedings were promptly withdrawn, there has been no necessity for bringing the Act into operation in any single instance. The Act, in this respect, has so far justified—and indeed has more than justified—the hope which I ventured

to express when it was passed, that the mere existence of this law would, in a great measure, suffice to repress the mischief against which it is aimed, and that the actual enforcement of its provisions would be a thing of very rare occurrence. As a matter of fact, seditious and disloyal writing—writing calculated to inflame the minds of the masses and to bring the Government into contempt—has been entirely stopped. At the same time there has been no interference with the legitimate expression of opinion. The liberty of the Press has not been in any way restricted. It might have been apprehended, and the apprehension would not have been unreasonable, that, for a time at all events, the result of passing the present law would have been different; that as a matter of fact there would have been some restriction on that free criticism of the measures of the Government and the acts of public officers which every well-wisher of good administration would desire to encourage. By many persons it has been assumed, and it is still assumed, that such must be, and that such has been, the natural result. It is constantly alleged that the Vernacular Press has been gagged; that the Native Press has been silenced.

"I am bound to say that, in the case of persons at a distance—in the case of English statesmen who have no opportunity of knowing what is actually going on on the spot—such impressions are by no means unreasonable. But to those who are acquainted with the actual state of things—to those who have the opportunity of seeing the vernacular newspapers, or the extracts from them which are periodically printed—it must, by this time, be apparent that the result which might have been apprehended, has not occurred. To them it must be clear that the assumption to which I have alluded, is altogether unfounded, and that for all the purposes of legitimate discussion and criticism the Native Press is as free as it ever has been. I need only allude to the comments which have been constantly made in the vernacular newspapers on the Press Act, on the License-tax, and on the Arms Act, to show that on all these matters, and I may add on other questions in regard to which there has been difference of opinion, in regard to which the measures of Government are objected to, either by the community in general or by particular classes, there is still the freest and the most unreserved criticism and comment. This, my Lord, so far as we can form a judgment from the history of the past seven months, has been the result, and I cannot but think that it is a result which must be regarded as very satisfactory. The Act, which in many quarters has been so vigorously condemned, has entirely succeeded in its object of checking seditious writing, and has in no way restricted or diminished the legitimate freedom of the Press.

"My Lord, it has been said, and the opinion appears to be very generally entertained, that, in directing the amendment of the Act for which this Bill provides, and in the remarks contained in the despatch which the Secretary of

State addressed to the Government of India in June last, there was a practical condemnation of the Vernacular Press Act. It appears to me that those who hold this opinion, can hardly have studied the despatch with care. It is impossible, I think, to read the sixth and eighth paragraphs of the despatch with any care or attention, without being forced to the conclusion that, so far from disapproving of the policy of the measure, the Secretary of State emphatically approved of it. In the sixth paragraph of the despatch, Lord Cranbrook writes that he is bound to say that 'a strong case appears to be established for 'the further control of the class of newspapers at which the Act is aimed;' and, after noticing the arguments which were adduced by some of the speakers in this Council, His Lordship proceeds to add an argument of his own, which is to the effect that, 'remembering how few opportunities the experience of these 'writers has afforded them of understanding the limits of justifiable criticism, 'he is inclined to think that a system of pecuniary penalties, leviable under 'bonds, would be more applicable to their case than criminal prosecutions 'for an offence which may conceivably entail a punishment so heavy as transportation for life.'

"And here I may remark that the general approval of the principle and policy of such an Act as this is perfectly compatible with the disapproval of a particular and not very important provision in it, such as that which is expressed in the ninth paragraph of the despatch with reference to the censorship clauses, and which has led to the preparation of the Bill now before the Council.

"It would be idle to deny that the Vernacular Press Act has been received with disapproval by many persons whose opinions are entitled to the respectful consideration of this Council. Such a result was only to be expected. The measure is one which was not resolved on by the Government without great reluctance and regret, and it was not probable that a measure of this nature (I, certainly, for one, never indulged in such a delusion) would be received with acclamation. At first, it was supported by a certain portion of the English Press in India. It was condemned by the greater portion of that Press. As to the policy of the Act opinions differed. As to the mode in which the Act was passed,—its being passed at a single sitting of the Council without the usual notice to the public—the disapproval and the condemnation were more general. The Act was, at first, very favourably received in England by an important section of the English Press; but it met with the emphatic disapproval of three eminent and experienced members of the Council of India; and, in the debate which took place in Parliament in the month of July last, in a house more than usually full, when it is considered that the subject for discussion was an Indian one, it was condemned by a minority, amounting to the comparatively large number of 152 members.

"Well, my Lord, as, notwithstanding these expressions of disapproval—expressions of disapproval which have emanated from men of very various shades of opinion—it is not proposed to repeal the Act, and as, notwithstanding all that has been said and written, the Government of India have not in any way receded from the opinion that the Act was a political necessity, it seems only right, and indeed it is only respectful to the authorities who have condemned the Act, that I should offer a few remarks with reference to the objections which have been taken.

"In the first place, as to the mode in which the Act was passed, as to its having been passed through the Council at a single sitting without any previous intimation to the public that such a measure was contemplated, I will only say that, while the Government deemed it expedient that this course should be taken, and while they are still impressed with the necessity which led them to take this course, they perfectly recognise the fact that this is a question on which there is great room for difference of opinion; and they would greatly regret that the course which was taken in this case should be regarded as a precedent to be followed hereafter, save under circumstances of grave political emergency. There is no principle to which the Government of India attach a higher importance—there is no policy upon which they lay greater stress—than that of submitting their legislative projects to the freest and the fullest public discussion. They would greatly deplore any general departure from that policy; and if such a result were to follow from the course which it was deemed expedient to pursue on the occasion to which I am referring, they would regard it as seriously detrimental to the public interests and prejudicial to the efficiency of the administration.

"Passing on to the policy of the measure, apart from the mode in which it was passed, I must be permitted to say that many of the objections which have been urged against it appear to me to have been based on a misapprehension of the actual facts. It has been alleged that the subject of restrictive regulations for the Press is much more a European than an Indian question. It has been said that 'sensitiveness under a tropical sun 'to harsh, 'unjust and often mendacious strictures in the Press amongst zealous and 'comparatively young officials is no more than might be expected. Under 'all despotic Governments the disposition to shackle the Press has prevailed. 'Increased age and experience of the little harm done by Press attacks 'when the measures of Government are sound in themselves produce a 'more robust temperament and a greater disposition to tolerate minor evils 'when they are the necessary accompaniments of larger benefits.' And regarding the Members of this Council, it has been affirmed, as evidence of their incompetency to deal with such a subject, that they have no

practical knowledge of English political life. It has been said that among us there is not a single name known in connection with the history of English politics. My Lord, I feel bound to say that these remarks appear to me to betray a very inadequate apprehension of practical facts. In the first place, it strikes me as a somewhat strange thing to be told that the Members of this Council are too young to form a sound and calm judgment on a question of this nature. When, to take my own case, I remember that I have passed upwards of six and thirty years in the public service; when I reflect—and it is a sad and melancholy reflection—that several years have passed since I completed two-thirds of that period which is usually considered to be the average span of human life, I am amazed to learn that I am too juvenile to distinguish liberty from license, or to see the difference between the legitimate criticism of public men and measures and the preaching of sedition and disloyalty. Nor can I admit that the fact of most of us having passed the greater part of our lives in India disqualifies us from judging of the probable effects of seditious writings—of such writings as those which led to the passing of this Act—upon the natives of this country.

"My Lord, there is one important distinction which appears to me to have entirely escaped the attention of all those who have condemned and disapproved of this Act. I refer to the distinction which exists between the English papers published in this country and the Vernacular papers, as regards the effect which they respectively produce on the minds of persons who are subjected to their attacks. It seems to be thought by many of those who have criticised and condemned our measure, that the Vernacular papers are commonly read and discussed in Anglo-Indian households, and that they form common topics of conversation in Anglo-Indian society. It seems to be supposed that when the *Amrita Bázár Pátrika* attacks Mr. Brown of Bardwán for some extraordinary order in the Police Department, or when the *Dacca Prakash* abuses Mr. Jones of Patna, the subject is at once discussed at the Calcutta and Simla dinner-tables. I need hardly say to the Members of this Council that such an impression is ridiculously wide of the mark. The truth is that the only Europeans who read or see the Vernacular newspapers are a limited number of officials, who study them as a part of their duty, for the sake of obtaining any information that they may contain, or of acquiring an insight into the views or feelings of Native society, so far as such views or feelings are disclosed or represented in them. Socially, it may be said that they are unknown and unheard of in Anglo-Indian society. The case, as we all know, is quite different as regards the English papers; and I am bound to say that the allegations which have been made would have had a considerable show of reason—perhaps I might say a considerable amount of

reason—if the measure to which I am referring had included the English newspapers in the scope of its operation. The distinction seems to me to be an obvious one; but it has been overlooked even by those who ought to have been able to recognise it.

"Another misapprehension to which my attention has been drawn in considering this subject and in reading what has been said and written about it, is as to the extent of the circulation of the Vernacular newspapers. It seems to be supposed that, because we have a population (including, I presume, the Native States) of 240 millions of people, while the circulation of the Vernacular newspapers does not amount to more than 100,000 or 150,000, therefore that circulation must be regarded as totally insignificant. But the fact is that the circulation of Vernacular newspapers—and this is a fact perfectly well known to every one who has looked into the subject—is in no way limited by the number of copies actually struck off. The great majority of those who become acquainted with the contents of the Vernacular papers, do so, not by reading them, but by hearing them read. The mischief which is done by a single seditious article cannot be measured by the number of copies of it which has been printed.

"In some quarters a contrast has been instituted between the views which were held by the Government of India in 1835 and those held by the present Government of India in 1878, and attention has been specially directed to the opinions expressed and the remarks made by Lord Macaulay on the former occasion. Now I should like to ask those persons who institute that contrast, whether they feel at all certain that Lord Macaulay, if he had been alive and among us, would have been an opponent of the Act which we lately passed. It is quite clear that Lord Macaulay was by no means insensible to the possibility of peculiar circumstances arising which would render it necessary to resort to special measures for controlling the Press. When the question was under discussion in 1835, Lord Macaulay wrote that 'if peculiar circumstances should 'arise, there would not be the smallest difficulty in providing measures adapted 'to the exigency.' He remarked that 'no Government in the world is better 'provided with the means of meeting extraordinary dangers by extraordinary 'precautions. Five persons, who may be brought together in half an hour, 'whose deliberations are secret, who are not stopped by any of those forms 'which elsewhere delay legislative measures, can, in a single sitting, make a 'law for stopping every Press in India.' It appears to me that those who quote Lord Macaulay against the present Press Act are hardly warranted in assuming that he would not have regarded the disloyal features which have characterised the Vernacular Press for many years past, up to the time indeed of the passing of the present Act, as a sufficient justification, not for making a law for stopping every Press in India, but for making a law which should enable the Government

more easily to punish and to prevent the dissemination of sedition. In my humble opinion, the remarks made by Lord Macaulay more than forty years ago afford a strong presumption that if he were now here, filling the place at this moment occupied by my hon'ble colleague Mr. Stokes, he would have been a cordial supporter of the Vernacular Press Act.

"I must be permitted to say a few words regarding the extraordinary description which has been given in another place of the character of the writings which led to the passing of the Vernacular Press Act. It was said by the principal speaker in the debate to which I have referred, that, if he rightly understood the feeling of the Indians, they complained of particular acts, of the operation of particular laws, yet that there was nowhere a disposition to deny that British rule is beneficial to India. He also said that there was a good deal that was silly and frivolous, along with a good deal that was permissible, and a great deal that was positively useful, in the writings to which I refer. Now, I must assume that those who attacked the action of the Government of India on that occasion must have read the speeches made in the Legislative Council in Calcutta, and the quotations which were then given from writings in the Vernacular newspapers. But I observe that care was taken not to quote any of the extracts which were read in this Council, and this, perhaps, was prudent; for it appears to me that it would have greatly taxed the ingenuity of even the most eloquent orator and the most skilful debater of our time, to reconcile the sentiments conveyed in any one of those extracts with the hypothesis that there is nowhere a disposition to deny that British rule is beneficial to India.

"By another speaker it was affirmed that the writings complained of amounted to no more than dissatisfaction with the Government; and by another it was alleged that it was almost impossible to find anything in the Vernacular Press of India that could be called seditious in the real sense of that word. I will not take up the time of the Council by reading to it over again the quotations made in the speeches delivered on the 14th of March last, and which, in my opinion, have been so strangely misdescribed by the speakers to whom I have alluded; but I will take the liberty of reading to it a passage which occurred in a leading article of one of the Calcutta newspapers—a newspaper which is not commonly supposed to be friendly to the Government—a few days after the Act was passed. The passage is as follows:—

"'Of late years, only too many of these papers seem to have devoted themselves wholly and solely to the task of sowing the seeds of disaffection in the minds of their readers. Their columns teem with invectives against the English Ráj and the English national character. The misery endured by the Native population under our rule is constantly dwelt on, and

studiously contrasted with the prosperity supposed to have existed under the Mogul Emperors, whose paternal administration is painted in the brightest colours. Ambiguous prophecies of England's loss of India are mingled with hints that our departure is likely to be expedited by either foreign invasion or a general rising of the people. One sentence calls attention to the numerical weakness of our army, which is put at less than half its strength; the next points out that this slender force has to hold a population of 250,000,000 in subjection. There can be no mistake as to the kind of application language like this is intended to have, however carefully the writer may avoid openly advising rebellion. Within the last year or two the number of these preachers of sedition has largely increased, their tone has grown perceptibly bolder, and both their attacks upon Government and their libels upon private persons have become more reckless. Such writings, circulated by thousands, as they are, cannot fail to exert a most mischievous influence on the feelings of the ignorant masses who depend on them for all the ideas on public affairs they possess. The germs of danger, latent and harmless now, may become truly formidable when fermented by the heat of a future period of political excitement.'

"Now, I cannot but think that, in the passage which I have just read, the Editor of the Calcutta newspaper manifested a far more just and correct appreciation of the real drift and meaning of the writings against which the Vernacular Press Act was directed than was manifested in the debate to which I have alluded. In that debate, and in a great deal that has been said and written on this subject, there is another distinction, and a very important one, which seems to me to have been entirely lost sight of. It is this, that the vast majority of the English papers, however violently they may attack men or measures, always attack them on their individual merits, treating them as accidental blots upon our system, while the Vernacular papers too frequently and too constantly treat the persons and things they denounce as the types and necessary results of a foreign rule, of the British Rāj, and assail our system as a whole. This is a most important distinction, which cannot be too constantly borne in mind.

"Since the publication of the Bill which I am now asking the Council to consider, several petitions and representations have been received by the Government, some of them urging the entire repeal of the Act, others suggesting radical alterations in it. The expediency of repealing the tenth section of the Act, which deals with publications as distinct from newspapers, is urged in many of these petitions. Another prayer of the petitioners is that the Bill should provide an appeal from any proceedings that may be instituted under the Act to the ordinary judicial tribunals. It is also alleged, and not without reason, in more than one of these petitions, that the amendment which is now being proposed in compliance with the instructions of the Secretary of State will make the Act more stringent.

"The Government have given their most careful consideration to all these representations and, as the Council are aware, they have postponed this debate

in order that there might be ample time for the consideration of these representations and of any others that might be received. But after having given the subject their most careful attention, they have not deemed it expedient to propose any further alterations, beyond the one single alteration for which the Bill provides, and which is proposed in compliance with the directions of the Secretary of State.

"It has been contended that the provisions of the tenth section of the Act will tend to arrest the development of Oriental literature. I need hardly say that the Government of India would greatly deplore such a result. In connection with our educational operations, there is no subject to which the Government attach greater importance than the promotion of elementary education of an efficient kind, and, with this view, the formation of a sound Vernacular literature. But the Government do not see any reason whatever to apprehend that these most desirable objects will be in any way retarded by the operation of the Vernacular Press Act. They do not believe that this particular section of the Act will hinder the development of a sound vernacular literature, any more than its general provisions have interfered, up to the present date, with the legitimate freedom of the newspaper Press.

"The Government cannot entertain the proposal to throw open an appeal from proceedings under the Act to the ordinary judicial Courts. Such a provision would be entirely inconsistent with the policy of the Act, which policy is to substitute a summary procedure for the procedure which is provided for in the Indian Penal Code.

"My Lord, I think I have now noticed all the points to which it is desirable to advert in bringing this subject again before the Council. As I have already said, the Government consider the working of the Act during the few months that it has been on the Statute-book, to have been even more satisfactory than the most sanguine expectations could have foreseen. So far it has effectually repressed the evil against which it was aimed, while it has in no way interfered with or restricted the legitimate freedom of the Press. The subject is by no means free from difficulty. It is, indeed, one of those many difficult subjects with which the Government of India have constantly to deal. Only a few days ago I was reading in the memoir of an eminent and popular Minister, who belonged to a generation now passed away, a speech delivered by him many years since—delivered by him, it so happens, in the very year in which Sir Charles Metcalfe's Act was passed. On that occasion the Minister, referring to the heavy responsibilities which all English Governments have to sustain, quoted, as applicable to the time at which he spoke, certain words which were

used by Mr. Burke in the British Parliament many years before. Those words were—

"'We may have rivals, we may have enemies; I do not fear the power of our rivals, I do not fear the greatness of our enemies; but there is one thing which I do fear, and that is our own power and our own greatness. Our Indian Empire is an awful thing.'

"My Lord, the difficulties inherent in our Government of India have not diminished during the forty-three years which have elapsed since Lord Melbourne quoted those remarkable words of the most eminent political philosopher that the English nation has produced. The responsibilities of the Government of India have not decreased. They may be different in 1878 from what they were in 1835; but they are not less onerous, not less burdensome, to those whose duty it is to discharge them. It was with a profound sense of those difficulties and responsibilities—of our responsibility for maintaining peace and order in this great Empire—it was under the influence of a sincere desire to promote the well-being of the millions entrusted to our rule, that the Government of India brought forward the measure with which this Bill is connected. We claim that that measure shall be judged by its results, and we are sanguine that the judgment so formed will not be unfavourable."

The Hon'ble MR. THORNTON said:—"Before making the few observations I have to offer upon the motion immediately before the Council, I propose, with your Lordship's permission, to follow the example of the hon'ble the Mover and say a few words on the general subject of the enactment which has given rise to so much criticism both in England and in India. And I propose to do so, not because I can aspire to any special qualifications for defending the action of this Council or of the Government—not because I can hope to add anything of value to the able and exhaustive arguments of the last speaker—but because, being an Additional Member of your Lordship's Council—that is to say, a member in no way connected with the Executive Government, and consequently in no degree responsible for the original introduction of the measure—I am in a position to speak without suspicion of being in any way biassed by that feeling of paternal solicitude which may be presumed to animate the members of the Executive Government in favour of their own off spring.

"And first, my Lord, I would venture to offer a humble tribute of admiration to the spirit of fairness and moderation which—subject to the exceptions noted by my hon'ble friend—seems to have generally characterised the debate in Parliament on the Vernacular Press Act of 1878. There is much in the sentiments expressed on that occasion by members of the opposition which commands my hearty sympathy—and indeed must command the hearty sympathy of all Englishmen; nevertheless, after having carefully reconsidered our

position in the light of the criticisms of Parliament and the Press, and after having carefully watched the effect of the enactment on the Vernacular Press of India, I have arrived, independently, at a conclusion similar to that at which the hon'ble the Mover has arrived, namely, that, however much we may regret the necessity for the measure, we have no reason to regret that it was passed.

"My Lord, all the able speakers who in the House of Commons disapproved of or denounced the proceedings of this Council laboured under one signal disability,—they knew nothing about India."

The Hon'ble SIR ALEXANDER ARBUTHNOT.—"This is not quite correct. One of the speakers at all events (Sir George Campbell) knew something about India."

The Hon'ble MR. THORNTON.—"I said '*able* speakers;' none of the able speakers knew anything about India: but I venture to express the opinion that the difference between India and England constitutes the entire justification, the entire *raison d'être*, of the measure under criticism.

"My Lord, having passed nearly twenty years of my life in the midst of the people of one of the provinces of India, sometimes in a judicial, sometimes in an executive, capacity, and latterly as Secretary to the Local Administration, I may, perhaps, without arrogance, lay claim to some acquaintance with the character and feelings of its population. Well, the general result of my somewhat protracted experience is that I know that the mass of the population of the Panjáb is prosperous and contented and exceedingly well-affected towards the British Government. Of course, it would be absurd to expect from an alien and lately conquered race the devotion which an Englishman feels towards his sovereign, or a Rájput towards his hereditary chief; still there can be no question that the people of the Panjáb are as well-affected to the British Government as an alien and conquered race can be. But, while I know this to be the case, I know also that the mass of the population is exceedingly simple, exceedingly child-like, exceedingly credulous and, especially in times of religious or political excitement, easily misled and agitated by the absurdest statements in the Native newspapers.

"Such, my Lord, are the general impressions I have formed after some years' residence in India; but I am well aware that no mere statement of personal impressions, however carefully, however deliberately those impressions may have been formed, will have the slightest influence on the opinion of the public unless their correctness is supported by facts or illustrations. I propose, therefore, to take up the time of the Council (but not, I trust, unprofitably) by

citing a few facts in support of my opinion—facts which may possibly enable the public to gather some idea of the exceeding credulity—the child-like simplicity—of a Panjábi newspaper audience.

"The first instance I will bring to the notice of the Council occurred some years ago—in the year 1861 or thereabouts. In or about that year a paragraph appeared in a Vernacular newspaper to the effect that it was believed to be the intention of the Right Hon'ble the Secretary of State for India to issue a proclamation ordering that, within a certain period, every male inhabitant of India should procure for himself and wear that species of European habiliment designated in colloquial phrase a "chimney-pot;" and that any person failing, within the period prescribed, to comply with the provisions of the ordinance would be liable to the pains and penalties of the Indian Penal Code. My Lord, it will hardly be believed, but it is the fact, that this absurd statement caused no small stir amongst the population of the Panjáb.

"The second instance with which I will trouble the Council is of more recent date, but affords, I regret to say, no indication of diminution in the credulous simplicity of the Panjábi. Two or three years ago the General commanding the Lahore Division, who had been devoting his attention to the important subject of transporting artillery and military stores by railway, resolved to test the efficacy of his arrangements by taking (one morning) a battery of artillery and its accompaniments by railway from Lahore to the neighbouring city of Amritsar. Well, the intention of the General commanding at Lahore was communicated to the local English newspaper. This newspaper, my Lord, whatever may be its merits, and I doubt not they are great and numerous, was not usually addicted to pleasantry or humour of any sort; but on this occasion the Lahore journal for once belied its character and unfortunately perpetrated a joke. It announced the intention of the military authorities by saying that "the General commanding the Lahore Division would next day take the city of Amritsar by storm." The joke, such as it was, appeared literally translated in the Vernacular newspapers, and so reached the ears of the people of Amritsar. And what did the citizens of that great city do? Well, I will tell your Lordship what they did *not* do; they did not take the matter as a joke at all. They were filled with consternation. Shops were closed, business was suspended, and the public mind much agitated, until assured by the civil authorities that the General commanding the Lahore Division had no serious intention of blowing the city of Amritsar about the ears of its peaceful citizens.

"Many other instances of similar credulity might be adduced; but I will content myself with one other illustration—an illustration intended to give the public some idea of the stage of mental development at which the mass of our

population has arrived. I will read, then, to the Council the substance of an article—a leading article—which appeared a few weeks ago in the columns of a Vernacular newspaper published in a city which aspires to be the most advanced and the most intelligent of all the cities under the administration of my hon'ble friend upon the left—I mean the city of Delhi. In that city is published a Vernacular newspaper which goes by the name of the *Mihr-i-Darakhshán* or 'Flashing Sun.' In the pages of this brilliant periodical there appeared in the month of July last an article the object of which is to prove the race-identity between the Hindú and the Englishman. This proposition, my Lord, is supported, is seriously supported, by the following arguments :—

"Argument the first.—'There is a tribe of people in Europe called the Dutch—*Daksha* is the name of one of the sons of Brahma.'

"Argument the second.—'In the Urdú language *Khatrin* means a woman of the *Khatri* caste—one of the wives of King Henry the Eighth of England was called *Katherine*.'

"Argument the third.—'Both Englishmen and Hindús'—bathe daily.

"Argument the fourth.—'Both Englishmen and Hindús—eat pork. *Báráh* or *the hog* is the name of an incarnation of Vishnu; and *Bacon* is a common name in England.'

"Argument the fifth.—'Englishwomen and Hindú women—wear petticoats.'

"And now comes an argument which our author evidently considers (to use a familiar phrase) the clincher. It is as follows : 'Some Hindús wear the Bráhmanical thread—Englishmen wear braces.'

"My Lord, the audience which believed the newspaper hoaxes of 1861 and 1875—the audience to which the double-distilled rubbish I have just quoted is seriously addressed—is the population we had in view—at any rate it is the population the present speaker had in view—when we passed the Vernacular Press Act of 1878. Few will, I think, deny that a population such as this requires to be specially protected from seditious and inflammatory statements in the Native newspapers, and that utterances which may be treated with contempt in more advanced communities may be fraught with mischief or even with danger here.

"But some of our critics, while not denying the expediency of legislation for securing a more stringent control than heretofore over the Vernacular Press of India, have taken exception to some of the provisions of our enactment; and they have taken special exception to the provision which vests certain powers over the Vernacular Press—that is to say, powers for preventing the

circulation of seditious or inflammatory statements or statements calculated to intimidate the Native magistracy—in the Executive Government and excludes the jurisdiction of the ordinary judicial tribunals. If—argue these critics—if legislative control over the Vernacular Press is necessary, why not exercise such control through the agency of the ordinary Courts of Law? Why invest the Executive Government with an arbitrary and dangerous authority? To this objection, my Lord, an answer has been given by my hon'ble friend the Mover, and an answer was given by anticipation when the Bill was considered at Calcutta. It was then explained that, assuming the preventive measures of the Act to be necessary, it was of extreme importance that they should be carried out expeditiously and quietly, and not in such manner as to give the authors of the mischief the *eclat* and importance of a public prosecution—a proceeding which would simply intensify the evil it was sought to remedy. This explanation has not, however, satisfied our English critics. That it has not done so, my Lord, is perfectly intelligible. From the period of the Stuarts, Englishmen of all classes have inherited a rooted distrust of the Executive Government in matters affecting the liberty of the subject. That distrust, I am proud to say, I have inherited myself in common with the warmest lovers of freedom and the coldest admirers of bureaucracies; nevertheless, I cannot but feel that such distrust is wholly inapplicable to the situation in India generally, and to this measure in particular. My Lord, when the Legislature of India agreed to vest the above-mentioned preventive powers in the Executive Government to the exclusion of the jurisdiction of the ordinary Courts of Law, it felt that it was not making over these powers to an irresponsible despot, but to officers acting under the most severe and strict control. Under the provisions of our enactment, no executive officer of first instance, whether Commissioner of Police, Collector or Deputy Commissioner, can put an iota of the Act in force except with the previous sanction of the Local Government. My Lord, we are so fortunate as to have before us in this Council—in the person of my hon'ble friend Mr. Egerton—an embodiment of one of the Local Governments referred to. Does he, I ask, present the appearance of an oppressor of Native journalists—of an imperiller of the liberties of the British subject? Does he not rather present the appearance of a perfect English gentleman, penetrated with love of his country, love of British institutions, and of the people committed to his charge? But my hon'ble friend is not merely the embodiment of one Local Government; he is a typical representative of the whole class. Then, my Lord, all the Local Governments act under the immediate control and orders of your Lordship in Council; and here I would mention, with reference to certain remarks in Parliament to which the hon'ble the Mover has called attention, that amongst the Members of your Lordship's Council is one who—so far from having 'no practical experience of the working of free institutions'—has, if I mis-

take not, held the high office of Premier in a colony the institutions of which are certainly not less free than those of England—the colony of Victoria. Then your Lordship in Council is subject to the control of the Secretary of State in Council, and the Secretary of State in Council is under the control of Parliament. If these guarantees are not sufficient to secure the Native journalist from harsh or unfair treatment under the Vernacular Press Act, I do not know what guarantees could be sufficient.

"But the principal object of attack by critics—both in India and England—is, after all, not the Act itself, but the manner in which the Act was passed. That a measure involving interference with the liberty of the Press should have been introduced into the Council without notice and carried through all its stages in a single sitting, and this in a time of peace, has been freely denounced as a proceeding uncalled for and reprehensible. India, it is urged, at the time the Act was passed, was in a state of profound tranquillity, and as for the attacks of the Vernacular Press, they were as impotent as they were contemptible; why then adopt in legislating for the control of that Press a procedure only justifiable when the Empire is in danger, or in times of pressing emergency? Why, to use an oriental simile, summon so gigantic an elephant to demolish so insignificant a mosquito? My Lord, it is doubtless right that the power possessed by the Legislative Council of India of passing an enactment at a single sitting should be very sparingly resorted to, and that, when resorted to, the proceeding should be jealously, should be severely, scrutinized; and, in the present case, as Sir Alexander Arbuthnot has truly observed, there is much to be said both for and against the course which was pursued. Its justification is to be found, not, I venture to think, in theoretical discussion, but in a full knowledge and appreciation of the circumstances under which it was adopted; those circumstances are fully known only to your Lordship and the Ordinary Members of the Supreme Council; but I will tell the Council candidly why I, as an Additional Member, not in the secrets of the Government, did not oppose the suspension of the standing orders, but agreed to the immediate passing of the Act. It was because I felt that, though India was indeed tranquil, the times were critical; that, though the attacks of the Native Press were truly as impotent as they were contemptible, they might, under altered circumstances—and circumstances might any moment alter—become fraught with serious mischief and even danger; that, in the event of war, the disaffected residuum, and such a residuum exists in the best regulated communities, would, unless restrained by fear of a procedure more swift and certain than a dragging prosecution under the Indian Penal Code, at once make use of the Vernacular Press for disseminating distrust and suspicion of the British Government and misleading and exciting our ignorant and impressionable populations. Under these circum-

stances it seemed to me that any delay in passing the measure, or any protracted discussion of its provisions before enactment, was to be deprecated. In a word—and to put the matter in familiar form —it appeared to me that in the procedure adopted by them the Government of India had been guided by the very sensible consideration that 'a stitch in time saves nine.'

"Such, my Lord, are the arguments which, I venture to think, may be fairly urged in favour of the proceedings of this Council. Let me now, again following the example of the last speaker, invite the Council to look at the matter from another point of view. Let us endeavour to test the propriety of the enactment by its results. In the first place, have any of the evil things predicted of the measure actually come to pass? Has it had the effect of in any way repressing the *bonâ fide* criticism of public measures or the conduct of public officers? Has it in any way checked the free representation of grievances? Has it made the Vernacular Press the servile instrument of authority? If such were the result of our legislation, then I, my Lord, should be among the first to exclaim with emphasis 'Pereat Press Act!' But, after very careful enquiry and regular perusal of the Press Selections, I find, in common with the hon'ble the Mover, that nothing of the sort has occurred. There is not the slightest indication in the Native newspapers of any abstinence from *bonâ fide* criticism. There is no sign of any reticence in the representation of grievances. And we certainly cannot say of the Indian journalists of to-day what was said of the Fescennine writers of antiquity—

> "———— vertêre modum formidine legis
> *Ad bene dicendum delectandumque redacti.*"

But, it may be asked, granting that no evil has flowed from the enactment —has any positive good resulted from it? Undoubtedly, immense benefit has resulted. *The intolerable license of the past has disappeared, and there is a most marked improvement in the general tone of the Vernacular Press of India.* But not only has there been a marked improvement in the general tone of the Press; in common with the Press Commissioner I have noticed also a marked improvement in the style and matter of the articles published—I must except, indeed, from this general commendation the lucubrations of the brilliant Delhi periodical; but, speaking generally, there is a noticeable improvement not only of tone but of style and matter,—so much so that I have little doubt that, at no distant period, the Native Press of India, instead of being, as it has been too often in the past, a disseminator of mischief and more or less a reproach to civilization, will become, as indeed many Vernacular newspapers are already, a valuable instrument of education, a valuable exponent of the views and wishes of the people and a most useful aid to the

Government of Her Majesty in the great and anxious work of administering this vast Empire.

"Upon the whole, then, my Lord, I venture to hope that I am justified in reiterating the opinion which I expressed at starting, that, whether regard be had to the reasons which led to the enactment of the Press law, or the results which have flowed from it, there is no reason for regretting that the Act was passed. I think I am further justified, under the circumstances, in expressing my entire concurrence in the views of the hon'ble the Mover as to the probable opinion of Lord Macaulay (had he survived to the present time) upon the measures taken: indeed I am disposed to go even further than my hon'ble friend; I am inclined to assert with some degree of confidence that, had the distinguished mover of the adverse resolution in the House of Commons the misfortune to occupy my humble position on the present occasion, he would in all probability, have taken up at least two hours of your Lordship's time by an eloquent oration *in defence* of the action of the Government of India in having passed at a single sitting the Vernacular Press Act of 1878!

"But, my Lord, while I believe the action of the Government of India in the matter of the Press Act to be defensible and the main lines of the enactment to be sound and suitable, I am quite prepared to admit that some of the provisions are open to amendment. In particular, I think the censorship clauses may be appropriately withdrawn. I never liked those clauses, and my dislike to them is based on practical experience. In the province in which I have had the honour of being employed, a censorship of the Native Press was in force (under a local ordinance) for a period of eight years—from the year 1857 to the year 1865. It was first imposed by that illustrious statesman Lord Lawrence, when Chief Commissioner of the Panjáb, and was kept up with vigour during the régime of his distinguished successor Sir Robert Montgomery. But, with the deepest respect for the great names associated with the censorship of the Press in the Panjáb, I am constrained to confess that the result was (in my humble opinion) far from satisfactory. The result may be described briefly by saying that the Vernacular Press of that period contained *a minimum of news and a maximum of adulation.* My recollection of those days has led me to form an opinion very strongly adverse to the institution of a censorship; indeed, had I to choose between a Vernacular Press absolutely free and a Press carried on under the depressing supervision of a censor, I should be disposed decidedly to prefer the former.

"In these circumstances, my Lord, I need hardly say that I shall give my vote most cordially in favour of the present Bill."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill be passed.

His Excellency THE PRESIDENT said:—"If I do not give a silent vote on this occasion, it is only because I am anxious that my silence shall not be misinterpreted. For no other reason should I have deemed it necessary to add a single word to the cogent observations with which my hon'ble colleague Sir Alexander Arbuthnot introduced, and the lively illustrations with which my hon'ble friend Mr. Thornton followed him, on the previous motion. Although the thoughtful speech of my hon'ble colleague naturally and properly turned chiefly upon the Vernacular Press Act, yet the Council is aware that neither the Vernacular Press Act, nor the principle, nor the expediency, of that Act, are here under discussion. My hon'ble colleague has reminded us that the Vernacular Press Act has now, for some time, been in force, with the approval of the Secretary of State and the ratification of the British Parliament, and, as the Hon'ble Mr. Thornton has also reminded us, no action can be taken under that Bill in any part of India without the carefully considered sanction of the Supreme Government. Up to the present moment no action has been necessary under the Act, and I trust that no such action will be necessary. But I do not hesitate to say that the existence of the law has been eminently beneficial in its effects, and productive of a marked improvement in the general tone and character of Vernacular journalism. Many evidences of this might, doubtless, be added to those which have been cited by my hon'ble colleague; but I think the Council will have been satisfied by the statement we have just heard from him that the effects of the Vernacular Press Law are vigilantly watched and considered by the Department over which he presides; and that this law, whilst effectually restraining seditious and profligate publications, has in no wise hindered the freest and fullest expression of antagonistic opinion on the policy and conduct of the Executive or the Legislature in the fair field of public criticism.

"The Council is aware that the object of the present Press Law is preventive, not punitive; and speaking for myself, I can truly affirm that my own object, both in connection with that law, and generally as regards all the relations between the Government and the Press, has been, not to check, but to promote, the growth, not to injure, but to improve, the position, of the Vernacular Press. I say more. The Vernacular Press has received from the Government which passed the existing Press Law, not merely toleration, but sympathy, not merely good wishes, but good offices. I have always felt that our duty toward that portion of the Press was of a two-fold character. We were bound, indeed, to protect the community from the abuse of freedom on the part of the certain Vernacular journals; but we were also bound in the interests of the community, as well as of the Press itself, simultaneously to do all in our

power to encourage and assist the Vernacular Press in the unrestricted cultivation of that freedom which the present law denies to no honest journalist.

"Now I think there is no use in ignoring the plain fact that the existence of a free Press in a country whose Government is not based on free institutions, or carried on upon representative principles, is a great political anomaly, and that the relations between such a Government and such a Press must, necessarily, be somewhat peculiar. A Press exists for the circulation of facts, as well as of opinions about them. If the facts are untrue, the opinions must be unsound. Adequate political information is as necessary for the sustenance of a healthy Press as adequate food for that of a healthy human being. But in this country the only source of authentic political information is the Government itself, whose political acts are the legitimate subject of that public criticism which it is the function of the Press to supply. If you put aside the Government; beyond and apart and independently of the Government, where is such information to be found? In the rumours of the streets, in the gossip of the bázárs and the mess-rooms, in the interior consciousness of amateur political prophets, or the occasional indiscretion of some official clerk; and therefore, I think that, in presence of a Press which is, so to speak, constrained to forage for its sustenance on such a barren moor, it is the duty of the Government, so far as it is possible to do so, to keep the Press fully and impartially furnished with accurate current information in reference to such measures, or intentions, on the part of the Government, as are susceptible of immediate publication, without injury to the interests for which the Government is responsible. In the arrangements organized for this purpose no distinction has been admitted between one journal and another as regards the European Press; nor any attempt made to bias the opinions of the Press on the information thus impartially provided to it. Now, I am happy to say, similar arrangements have already been commenced for placing respectable Vernacular journals in this respect on precisely the same footing as that of their previously more privileged European contemporaries; and I hardly think that the better portion of the Vernacular Press will be disposed to dispute my assertion that its position, so far as that position depends upon the Government, is, at the present moment, more satisfactory, and more assured, more respectfully recognized by the Executive, and, therefore, more influential with the community, than at any previous period.

"The object of the present Bill is to remove from the Vernacular Press Act a clause which was inserted into that Act, not without certain hesitation at the time, purely as a mitigating, not as an intensifying, clause. The Secretary of State, whilst sanctioning the whole Bill, inclusive of this clause, expressed an opinion that the option thus given to impecunious Editors to place their jour-

nals under temporary supervision as an alternative to penalties which might otherwise, in such cases, put an end altogether to the precarious existence of the offending journal, was a provision liable to misuse, and which might, in practice, introduce a principle nowhere else recognized in the Act, and, indeed, generally inconsistent with the spirit of it. The Secretary of State, therefore, requested the Government of India not to act upon this clause, leaving it to our judgment to decide whether the clause should be left in abeyance, or altogether withdrawn from the Act. The Government of India, fully appreciating the apprehensions of the Secretary of State on this point, and believing that practical difficulties might arise if the benefit of the clause were at any time claimed under the Act from which it remained unwithdrawn, has introduced the present Bill for the purpose of rendering impossible any such contingency. This amending Act, however, leaves of course wholly unaltered the character and principle of the original Act; and therefore I trust the Council will feel no hesitation in adopting the motion which I have now to put."

The Motion was put and agreed to.

CENTRAL PROVINCES EVIDENCE BILL.

The Hon'ble MR. STOKES introduced the Bill to make better provision for recording evidence in the Central Provinces, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Cockerell and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be published in the *Central Provinces Gazette* in English and in such other languages as the Local Government should think fit.

The Motion was put and agreed to.

DESTRUCTION OF RECORDS BILL.

The Hon'ble MR. STOKES also introduced the Bill to authorize the destruction of useless records in Courts in British India, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Cockerell and the Mover. He had nothing to add to the remarks which he made when he obtained leave to introduce the Bill, except that, in addition to the power given to the High Courts and the Recorder of Rangoon to make rules for destruction of records in their own offices and in the Courts subordinate to them, the Bill would also give the High Courts at Calcutta, Madras and Bombay power to make rules in the case of the Courts for the relief of insolvent debtors established in those towns. As at present constituted, the Insolvent Courts in the Presi-

dency towns, though presided over by Judges of the local High Court, were neither divisions of the High Courts nor Courts subordinate to them; but the presiding Judges sat as Commissioners under 11 & 12 Vic., cap. 35.

The Hon'ble MR. THORNTON observed that all would admit the necessity for securing the systematic destruction of useless public records, and he believed elaborate rules on the subject were in force in most of the provinces of India; but, with reference to the present Bill, he would venture to ask the hon'ble the Mover one question. If legislative sanction was really necessary to authorize the destruction of public records, on the ground that, amongst those records, there were documents which were private property, why should the scope and operation of the present Bill be confined to judicial records only? Why should not its operation be extended so as to embrace the records of other departments of the Government? The records of the Revenue, Settlement, Police and other departments were very voluminous,—stood in fact as much in need of systematic clearance as judicial records, and like those records sometimes included documents which were, technically speaking, private property.

The Hon'ble MR. STOKES said that he had not known that the Revenue records ever comprised documents which were private property. But if this really were the case, his hon'ble friend had pointed out a flaw in our legislation, which, so far as he was aware, was found in every Province in India except Oudh, where Act XVIII of 1876, section 39, made express provision for destroying all unnecessary records, whether civil, criminal or revenue. The Bill, as it stood, was a mere embodiment of the decision of the Home Department, and without express instructions, he would not feel justified in going further than the Bill now went.

His Excellency THE PRESIDENT suggested that the point should be settled in Select Committee.

The Hon'ble MR. STOKES having expressed his concurrence in this suggestion,

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments should think fit.

The Motion was put and agreed to.

PLEADERS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865. He said that that Act

provided that it should take effect in the Lower Provinces and North-Western Provinces of Bengal on the 1st January, 1866, and that it might "be extended by any other Local Government to its own territories by notification" at any time. But there was no provision empowering a Local Government to extend *a portion* of the Act to its territories. The Government of Madras now desired to extend the Act to the Pleaders and Mukhtárs in that Presidency, but it did not want to have any legislative provisions as to Agents in proceedings before the local Revenue authorities; and as it appeared expedient to the Government of India that Local Governments should have power to extend to all or any portion of their territories such portion of the Act as they might think fit, the present Bill had been prepared to confer that power.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 30th October, 1878.

SIMLA;
The 16th October, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla—No. 315 L. D,—30-10-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 6th November, 1878.

PRESENT:

His Excellency the Viceroy and Governor-General of India, G.M.S.I., *presiding.*
His Excellency the Commander-in-Chief, G.C.B.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble A. R. Thompson, C.S.I.
Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.
General the Hon'ble Sir Neville B. Chamberlain, G.C.B., G.C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Sir Shamsherparkásh, the Rájá of Sirmur, K.C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble G. H. M. Batten.

PLEADERS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Pleaders, Mukhtárs and Revenue-Agents Act, 1865, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs Thornton and Cockerell and the Mover. He had already explained that the object of this Bill, which had been framed at the desire of the Home Department, was to enable certain Local Governments to extend the Pleaders, Mukhtárs and Revenue-Agents Act, No. XX of 1865, *in part* to the territories under their administration, and that it originated in the desire of the Madras Government to apply the provisions relating to pleaders and mukhtárs, leaving those as to revenue-agents untouched. All he could say in favour of the Bill was that he believed it would attain its object. It was, he must confess, a piece of patchwork legislation; and he should much prefer to repeal the Pleaders Act (which was about the worst drawn Act on the Indian Statute-book, and which had been already twice amended) and to re-enact it with the necessary amendments of form and substance. The Committee to which he hoped the Bill would be referred would, he trusted, consider the desirability of taking this course. The opportunity might be taken of supplying a defect which he understood was much complained of in the Presidency-towns, namely, the absence of any power to make rules

under the Pleaders Act as to the qualification, admission and enrolment of proper persons as practitioners in the Presidency Courts of Small Causes. Sir Barnes Peacock, 1 Ben. A. C. 49, had held that "Courts of Small Causes" as used in the Act meant Courts of Small Causes in the mufassal established under Act XI of 1865, and the result was that the Presidency Small Cause Courts, holden under Act IX of 1850, were unprovided for in this respect.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments should think fit.

The Motion was put and agreed to.

FERRIES BILL.

The Hon'ble MR. STOKES presented the final Report of the Select Committee on the Bill to regulate Ferries in the Panjáb, the North-Western Provinces and Oudh, and moved that the Reports be taken into consideration. He said that the Bill in its second stage had found favour in the eyes of the four Local Governments concerned, and that, quite lately, the Chief Commissioners of Assam and Ajmer and Merwára had accepted the Bill as suitable to the territories administered by them respectively. The Committee had accordingly made it applicable to those territories, and the Bill would thus be the ferry-law for the whole of Northern India. The Committee had also extended section 28 of the Bill to the rash or negligent mooring, anchoring and fastening of vessels and rafts and to the rash or negligent stacking of timber. At present the section only applied to the navigation of vessels and rafts, and it might reasonably be doubted whether the Indian Courts would hold that "navigation" included mooring, anchoring and making fast. The extension of the clause to the stacking of timber had been made because it had been represented that in the Panjáb and elsewhere one of the most ordinary causes of damage to boat-bridges was the careless stacking of timber on river-banks so close to the water's edge that when the river rose the timber was carried away and borne down with violence against the bridges, which were thus often greatly injured. The Committee did not consider that the alterations now made were such as to render the republication of the Bill necessary; and they recommended that the Bill as now amended be passed.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

SALT TRANSPORT BY SEA BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Messrs. Thompson, Morgan and Batten be added to the Select Committee on the Bill to restrict the transport of salt by sea.

The Motion was put and agreed to.

The Council adjourned *sine die*.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

SIMLA:
The 6th November, 1878.

NOTE.—The meeting which was originally fixed for Wednesday, the 30th October, 1878, was adjourned to Wednesday, the 6th November, 1878.

Govt. Central Branch Press, Simla,—No. 361, L. D.—12-11-78—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 18th December 1878.

PRESENT:

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., Senior Member of the Council of the Governor General, *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. C. Paul.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to appoint Commissioners for the Port of Rangoon. He said that the proposal for the creation of a Port Trust at Rangoon was brought forward at the instance of the Chief Commissioner of British Burma, cordially supported, as would appear from the papers before the Government, by the Chamber of Commerce in Rangoon and all concerned in the mercantile interests of the port.

A very brief review of the past history and circumstances of the port of Rangoon would explain to the Council the necessity which existed for the proposed measure, based on the rapid development of the trade connected with it since it had been a British possession, and the urgency for a change in the present system of its administration, with a view to special arrangements to meet its future demands. Though the Province of Pegu was acquired by the British power after the second Burmese war in 1852, and Rangoon was constituted a port in the following year, it was not till some nine years after that the Pegu Division became amalgamated with the Arakan and Tenasserim Divisions, and became established as a single administration under one Chief Commissioner. Rangoon, from the superiority of its central position and its other advantages, became the head-quarters of the Local Government,

and from returns which were before him, it was ascertained that the shipping which visited the port in 1861-62 comprised some 860 vessels, with an aggregate of 2,95,000 tons. The bulk of this trade, however, was a coasting trade. Internal traffic had been only partially opened out, and the vessels which entered the port from foreign countries were but few in number. The goods landed by these vessels were carried to shore by boats. No appliances existed for the shipping or landing of cargo, and the place had been described in the earlier records of our settlement as presenting very much the appearance of a dirty fishing village situated in a distressingly unhealthy marsh. It was not until 1865, during the administration of Sir Arthur Phayre, that the first attempts were made to establish a wharf, which was finished in about two and a half years, at a cost of Rs. 1,31,000. The number of vessels which entered and cleared from Rangoon in 1866-1867 was 1,071, of 4,40,330 tons. The value of the trade had increased to four millions sterling. In the years 1868 and 1869, many important improvements were added to the facilities for approaching the port, by the erection of two substantial light-houses, which were completed in 1870; and immediately following, in 1871 and 1872, when his hon'ble friend the Lieutenant-Governor had succeeded to the administration, additional wharves were constructed on the banks, and to all of those warehouses and tramways and other appliances had since been attached, to meet the advancement and demands of a rapidly extending commerce. Further, a steam-dredger and flats had been purchased for the improvement of the bed of the harbour, and several boat-jetties had been added for the convenience of the lighter traffic, which was carried on extensively by the Natives.

The value of the trade, which was, in 1861-1864, £2,641,000, in 1866-1867 advanced to £4,085,000; in 1871-1872 to £5,365,000; and in 1876-1877 to about £8,600,000.

In the same period the aggregate shipping had increased from 867 vessels of 295,000 tons, to 1,687 vessels of 984,000 tons.

Briefly stated, to borrow the words of the Collector of Customs in Rangoon, who was an excellent authority on the subject from the knowledge he possessed, and the interest he took in everything connected with the port, nearly ten lákhs of rupees had been expended on public works for the benefit of the port during the last ten years. The entrance to the port was admirably lighted and well buoyed. The port itself had a fair amount—though, he would add, a not adequate amount—of wharf-accommodation, and the number of vessels visiting it had increased by fifty-eight per cent. during the decade, with an increase of tonnage of 124 per cent., and, in the value of trade, of 110 per cent.

The administration of this property on the foreshore, which, he might add, was almost exclusively Government property, extending to about two miles of river-frontage, was up till 1874 supervised by the town magistracy. When a municipality was established in Rangoon about that time, the Municipal Commissioners were vested with its control, the greater part of the wharves and jetties being farmed out to European and other lessees, and their proceeds were generally devoted, not so much to the improvement of the bank and the ports, as to the general internal needs of a young and hungry municipality. The absence of uniformity, regularity and direction in the management of the port-arrangements, led the authorities at the beginning of 1876 to take advantage of certain provisions of the Port Act, and to place the administration of the port and of the strand-bank under the Conservator of the Port and a committee associated with him; and they had the testimony of the present Chief Commissioner that, during the time this committee had been at work, they had effected many improvements on that portion of the bank under their care, though, at the same time, it must be admitted that the progress had not kept pace with the wider developments of the Province, and the importance of the trade of Rangoon. For example, there were no moorings in the river, fixed or floating. There were no floating jetties. There were no cranes that could lift more than five tons' weight, and the arrangement for Native boat-traffic was still extremely deficient. Much also had to be done for a better system of river-police. Though to a large extent the internal traffic of the Province had been developed by the excellent arrangements of the Irráwaddy Steam Flotilla Company, the opening of the Irráwaddy Valley State Railway had given an immense impulse to this trade, not only in our own districts, but from Upper Burma, which extended to the Provinces of South West China. With Upper Burma the trade had extended to nearly three millions sterling per annum; and it might be added that Rangoon, as the chief port in British Burma, absorbed now ninety-three per cent. of the entire foreign import-trade to the Province. Regular direct monthly communication was established with English ports viâ the Suez Canal, and 504 coasting steamers entered and left the port during the last year, while the connection commercially with Siam and the Straits was largely increasing every year.

It was in these circumstances of a very expanding trade, and the necessity for a change in the administration of the port, that the Chief Commissioner had represented to the Government of India the necessity for a legislative measure to place the control of the port and its affairs in the hands of a legally constituted body; and MR. THOMPSON would conclude his observations by calling the attention of the Council to certain statements in a memorandum drawn up

by the Chief Commissioner in submitting the present measure for consideration. He said—

"The management of both the port and the banks is entirely in official hands. In my opinion, it is not right that, in so large and important a harbour, the mercantile community, whose commercial enterprise is the very life and soul of the place, should have no voice in the management of the affairs of the port. Practically, the whole export and import-trade of the basin of the Irráwaddy and its tributaries, as far as Western China, is brought under contribution for the benefit of the port; while the merchants whose industry is taxed have nothing to say to the expenditure of the money. Of course, in any scheme that may be devised, imperial, provincial and municipal interests must be duly provided for; but it seems to me that the time has arrived when a voice in the expenditure of the port-dues and other taxes should be entrusted to those whose interests are directly and immediately concerned in the improvement of the river.

"At the same time, mercantile men cannot reasonably be expected to take an active share in the public business of the port, unless they are invested with the legal authority necessary to carry out the measures that may be devised for the common good. At present, the position of the strand-bank committee is not recognized by law. Practically, the committee are in the same position as a private person would be, who possessed lands and jetties on the river-bank. They may spend large sums of (public) money on the improvement of the banks, but no one need take advantage of the facilities provided. They have no power to compel ships to use the wharves, jetties or landing-places. They cannot recover dues from persons who use them and fail to pay, except by ordinary process of law. At the same time, they are liable to be personally sued by any one who may think himself injured by their proceedings. This is not a position which we can expect non-official gentlemen voluntarily to place themselves in.

"The defect lies in the division of responsibility within the port limits, in the constitution of the committee, and the absence of legal authority for, and legal recognition of, their powers. For all this, the proper remedy seems to me to be that suggested by the Chamber of Commerce, namely, the appointment of Commissioners with powers and duties duly defined and regulated by law."

It was for that purpose and with that object that MR. THOMPSON asked the permission of the Council to introduce this Bill. He might state that the Government of India had liberally consented to forego all claims for the outlay already incurred in the port and had sanctioned that the sum expended upon the port during the last ten years should not be a charge upon the new Port Trust, but that the port and the property in it should be vested in the Commissioners free of all incumbrances. The foreshore was almost entirely the property of the Government, and no private interests would be affected by the creation of the Trust. The Port Commissioners, as he had already said, would enter upon their duties free of all liabilities; and not only so, but he had reason to think the successful management of the Strand-Bank Committee would show a fair balance at the credit of the Port-fund, which would enable the new

Commissioners to commence at once upon the improvements which were necessary for the proper development of the trade and commerce of the capital of British Burma.

The Motion was put and agreed to.

CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Hon'ble Messrs. Evans and Paul be added to the Select Committee on the Bill to amend the Code of Civil Procedure.

The Motion was put and agreed to.

BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON presented the Preliminary Report of the Select Committee on the Bill to prevent the indiscriminate destruction of wild elephants in British Burma. He said that it would be in the recollection of the Council, that the Bill as originally introduced was limited both as regards its local extent and as regards its scope and object. The Act was to apply only to the territories under the administration of the Chief Commissioner of British Burma, and its object was to prevent the indiscriminate killing of wild elephants in the Government forests of that Province. But when the Bill was referred to a Select Committee, three suggestions were reserved for further inquiry and consideration; first, whether the scope of the Bill might not be suitably extended so as to regulate not only the killing, but also the capture, of wild elephants; secondly, whether the local extent of the Act might not be appropriately enlarged so as to include not only the territories of British Burma, but also the territories of other Provinces of India, where wild elephants were found; and, thirdly, whether some provision should not be introduced, whereby the tusks of wild elephants slaughtered should be declared, unless otherwise expressly allowed, to be the property of the State. After considering the replies made to the inquiries issued from the Legislative Department and the comments of the Local Governments, the Committee had deemed it expedient to adopt, in whole or in part, each of the above-mentioned suggestions. Accordingly, in the revised draft which he had the honour to present with this report, the provisions of the Bill applied to the capture as well as to the killing of wild elephants, and the local extent of the Act was so far enlarged as to include, in the first instance, the territories of the North-Western Provinces and Oudh, the Central Provinces and Coorg; and power was given to the Local Governments of territories other than the Provinces above-named, to extend its provisions to their respective territories or to any part of them. This enlargement of the local extent of the

Act introduced new matter for consideration. So long as the measure was confined to the territories of British Burma, the situation was simplified by the fact that all the forests of that Province in which wild elephants were found were Government forests. But in other parts of India, the case was different. For instance, in parts of the Central Provinces and elsewhere, herds of wild elephants were found in forests which were not the property of Government, but of private owners. The Committee had consequently to consider whether the law should be applicable only in the case of wild elephants found in Government forests, or should be applicable also in cases where they were found in forest-tracts which were the property of zamíndárs. On this point the Committee were of opinion that, having regard to the paramount importance, in the interest of the community, of preserving the breed of elephants in British India, it was just and expedient that the law should be applicable in the case of wild elephants wherever found in British territory.

Further, in concurrence with a suggestion received from the Department of Revenue, Agriculture and Commerce, provision had been made for the realization, on behalf of the State, of what he would venture to designate, in default of a better term, a royalty on all elephants killed or captured. Such a claim on the part of the Government, though it had not as yet been brought upon the statute-book, was no novelty in India. It was, in fact, already made and enforced in parts of British territory, and he believed it would be found to be in force in most, if not all, the Native States where wild elephants were procurable. The principle of the claim had the sanction of European codes, and it was also, if he mistook not—his hon'ble friend Mahárájá Jotíndra Mohan Tagore would correct him if he was wrong—in harmony with oriental sentiment, which regarded the wild elephant as the special heritage of Kings.

Briefly, then, the main provisions of the Bill, as amended, were as follows: that, in all territories to which the Act shall extend or be extended, no person shall kill, injure or capture wild elephants—otherwise than in defence of life or property—except under a licence from the District officer; such licence to be granted in accordance with rules made by the Local Government; which rules might provide, *inter alia*, for the payment by the licensee of a fee in money, tusks or a proportion of elephants captured.

Further, in view to prevent the unnecessary killing or capture of wild elephants without licence under plea of such act being done in defence of life or property, it was provided that, in all such cases, the elephant captured, or the tusks of the elephant killed, should be the property, not of the killer or capturer, but of the Government.

Other amendments had been introduced by the Committee and were duly noticed in the Report, but called for no special mention in the present occasion.

The Bill having undergone material alteration since its introduction, and its scope and extent having been enlarged, the Committee recommended its publication in the amended form before final consideration.

The Council adjourned to Tuesday, the 31st December, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA,
The 18th December, 1878.

Government Central Press.—No. 304 L. D.—20-12-78.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 31st December, 1878.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble Sir A. J. Arbuthnot, K C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

Lieutenant-General the Hon'ble R. Strachey, R.E., C S.I., F.R.S.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. C. Paul.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmed Khán Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. RIVERS THOMPSON introduced the Bill to appoint Commissioners for the Port of Rangoon, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Morgan and the Mover. He said that he had the honour to submit this Bill, for the introduction of which he had obtained sanction at the last meeting. He had endeavoured on that occasion to shew that the rapid growth of the trade of the Port of Rangoon reflecting, as it did, the general prosperity and progress of the Province of British Burma, which had been promoted within the last twenty years by the opening out of roads, and especially by the recent construction of the Irrawaddy Valley State Railway, had led the local authorities to consider the greater conveniences and appliances which were now necessary for facilitating the trade of the port and for placing the administration of it on a better footing. It was contemplated that what hitherto had been almost entirely under the executive administration of officers of Government, should now receive the sanction of a

legal enactment, both for the security of the increasing revenues of the port, and also for the better management of its much more extended business. With this object it was intended that resident members of the mercantile community should be associated with Government officers and be formed into a corporation vested with full powers for the control of the port. He might say that what had been proposed by the Chief Commissioner of British Burma had received the cordial concurrence of all those who were interested in the commercial enterprise of the place, and from what he knew of those gentlemen from his recent connection with Burma, he could give the Council the assurance that their co-operation would be wisely and intelligently directed to promote the best interests of the Port of Rangoon. In preparing the Bill which he had the honour to introduce, they were fortunate in possessing, as a precedent to guide them, a somewhat similar measure which had been in operation in Calcutta during the last seven or eight years and the experience which had been gained in the working of that measure. Indeed, one of the first steps which was taken by the Department which was immediately under his charge, on receiving the draft Bill from the Chief Commissioner, was to ask, through His Honour the Lieutenant-Governor of Bengal, for an expression of opinion from the Calcutta Port Commissioners regarding this Bill; and valuable suggestions had been made regarding it which had been adopted in the present Bill. The Statement of Objects and Reasons which was attached to the Bill now before the Council gave generally the outline of the provisions which it was proposed to enact. It provided, in section 5, for the appointment by the Local Government of a body of Commissioners, not more than twelve and not less than nine in number, of whom a certain proportion was to be non-official. Subject to the control of the Government, these Commissioners would in future conduct the entire administration of the port. The Commissioners were empowered to construct wharves, jetties, tramways, warehouses and other conveniences for the landing, storing and shipping of goods, to lay down moorings, to improve the port by reclaiming the banks and deepening the river-bed, and, if necessary, to provide tug-steamers. They would have the control of the Conservator appointed under the Indian Ports Act and of the pilots within the port limits. Their functions with regard to the landing and shipping of goods being of special importance, were provided for by certain sections which were based upon the Calcutta Port Commissioners' Act. Under those sections when the Commissioners had provided sufficient wharf-accommodation, they were empowered, with the previous sanction of Government, to order that all goods should be shipped and landed at those wharves, and through the agency of the Commissioners' servants, and to levy tolls and charges for the use of such wharves and for services rendered.

With reference to the practice which obtained in Rangoon as to the manner of shipping rice for export, exception had been taken to these compulsory clauses. It was known that the large staple exports from Rangoon were connected with the rice and timber trade. Large mills had been constructed on the banks of the Pegu river, a branch of the main river, and, ordinarily, vessels when loading with rice were anchored in close proximity to those mills as a matter of convenience. It had been pointed out that, having regard to the arrangements and to the necessity which often existed of taking in cargo on both sides of the vessel, the compulsory enforcement of approaching the wharves would be a hardship upon the mercantile community. This objection had been brought to the notice of the Chief Commissioner by the Chamber of Commerce at Rangoon, and provision had been made for introducing into the Bill a clause which authorized the Chief Commissioner to exempt certain classes of vessels from this compulsory obligation to which he had alluded. He might add, however, that every year there was a diminution in the practice of ships resorting to the Pegu branch, upon which the mills were situated; and they often now took up their berths in the main river, and rice was brought down to them in cargo-boats and thence shipped on board. It was also found that, with the opening of the railway, there was a prospect of the establishment of rice-cleaning mills in the interior of the country, and all rice husked and passed down by the railway (which would shortly be connected with the wharves) would of course be more conveniently and cheaply shipped from the wharves to the vessels directly. Even for those vessels which were anchored in the mid-channel of the main river, the absence of all moorings in a very dangerous tidal way would necessitate action on the part of the Commissioners to provide better security for vessels in the port. The sections under which powers had been reserved to the Chief Commissioner to exempt certain vessels from using the wharves had been accepted by the local mercantile community as quite sufficient to meet their wishes; and it might be accepted that, setting aside the export-trade altogether, the large and increasing import-trade from foreign countries would already afford regular employment to the wharf-accommodation and appliances in the port.

To enable the Commissioners to discharge the duties which were imposed upon them, all Government lands required for port purposes by section 12 were vested in them; and in addition to the tolls and charges above referred to, the port-dues and other revenues under the Indian Ports Act would be made over to them. They were also empowered to borrow money, with the sanction of the Governor General in Council, to carry out further improvements; and

he had no doubt that in a short period the Commissioners to be appointed would be able to render a good account of their trust and to shew results worthy of the chief port in the Province.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON also moved that the Bill be published in the *British Burma Gazette*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

STAMP BILL.

The Hon'ble MR. COCKERELL presented the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamps. He said that, as this Bill was of some importance to the public, he thought it might be convenient that he should state, now, that he hoped to be in a position to move that the two reports of the Select Committee be taken into consideration, and, no objection arising, that the Bill be passed, at the next meeting of the Council.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Code of Civil Procedure, section 4. He said that section 4 of the Code of Civil Procedure saved "any local law prescribing a special procedure for suits between landlord and tenant." It had been held that the local laws here referred to were only local laws in force when the Code was passed; and this opinion was supported by the fact that, when the legislature wished to save future laws, it said so, by inserting words such as "now or hereafter in force" (Act XV of 1877, section 6). The result of the present wording of section 4 of the Code was, therefore, to debar the local legislatures from dealing with suits between landlord and tenant. But this kind of litigation was pre-eminently matter for the local legislatures to regulate. The Bill accordingly amended section 4 so as to save clearly all laws of local legislatures, dealing with such suits, whether passed before or after the date of the Code. It also saved laws relating to the procedure in suits between landholders and their agents, such, for example, as suits for the recovery of money or the delivery of accounts or papers (Bengal Act VIII of 1869, ss. 30, 32).

The Motion was put and agreed to.

The Hon'ble MR. STOKES then introduced the Bill. He believed it had been for some days in the hands of Hon'ble Members; but as they might have overlooked it, and as it was very brief, he would read it to the Council:

"Whereas it is expedient to amend the Code of Civil Procedure, section four; It is hereby enacted as follows:—

1. In the said section, for the words 'local law' in each of the places where they occur, the words 'any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor, or a Lieutenant-Governor, in Council' shall be substituted; and for the words 'landlord and tenant,' the words 'landholders and their tenants or agents' shall be substituted."

The Hon'ble MR. STOKES applied to the President to suspend the Rules for the Conduct of Business. He said the matter was one of some urgency, as the Bengal Council were desirous of dealing at once with the subject of the recovery of rent, and he believed that the Hon'ble Mr. Mackenzie had already obtained leave to introduce a Bill for that purpose.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

BURMA COAST-LIGHTS BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to amend the law relating to the maintenance of Coast-lights in the eastern part of the Bay of Bengal. He said that the present coast-light dues of one anna per ton, levied under section 3 of Act XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), had been found insufficient to pay a fair rate of interest on the capital expended on the lights which at present existed on the coast of British Burma and to provide for their maintenance. Moreover, the recent total destruction of the Krishna Shoal Light-house would immediately entail a large expenditure. It had therefore been determined to raise the present coast-light dues from one anna per ton to one anna six pie, and to subject to the dues vessels making certain voyages not mentioned in the Act but in the course of which they benefited by the lights.

The Bill would repeal Act XIII of 1867 (which had already been amended) and re-enact it with the requisite alterations in respect of the coast-light dues and a few desirable changes in wording and arrangement.

The Motion was put and agreed to.

OUDH LAND-REVENUE ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. COLVIN moved for leave to introduce a Bill to amend the Oudh Land-Revenue Act, 1876. He said that the Bill, a copy of which was on the table to-day, was merely a supplement to the Bill for amending the North-Western Provinces Land-revenue Act. It consisted of a single section, by which certain advances made to agriculturists by the State (not being advances made under the Land Improvement Act of 1871) were declared to be recoverable in the same manner as arrears of land-revenue. A provision to this effect had been inserted in the Bill for amending the North-Western Provinces Land-revenue Act which was now under the consideration of the Council; and, as the Local Government desired that a similar change should be made in the law for Oudh, the present Bill had been framed with that object. Their wishes could not be met by the addition of any words to the Bill for the North-Western Provinces, because, although the administration of the two Provinces had been united, their codes of law remained distinct; and it would obviously be inconvenient to amend the law of one province by a section inserted in the code of another. A separate Bill therefore was necessary. The propriety of the change in the law which the Bill was intended to effect would come before the Council for consideration when the corresponding part of the measure for the North-Western Provinces was dealt with by it; and if it was determined that the change was a proper one to make, the Council would then be asked to pass the measure which he wished to introduce to-day.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 15th January, 1879.

CALCUTTA;
The 31st December, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 342 L. D.—3-1-79.—230.